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# TAX LAWS

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*Chapter 11 of the Public Statutes,*

AND A

COMPILATION OF THE SUBSEQUENT ENACTMENTS

REGULATING

TAXATION BY THE LOCAL ASSESSORS

IN

MASSACHUSETTS,

INCLUDING STATUTES AND AMENDMENTS THEREOF RELATING TO THE  
COLLECTION OF TAXES.

PREPARED FOR THE USE OF ASSESSORS.

Pub. Stats., ch. 18, § 3.

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## Commonwealth of Massachusetts.

TAX COMMISSIONER'S DEPARTMENT,  
BOSTON, July 6, 1893.

*To the Assessors of*

GENTLEMEN:—The following Compilation of the laws of this Commonwealth, of general application in relation to the subject of the assessment and collection of taxes, has been prepared, and is printed and forwarded to the assessors of the various towns and cities of the Commonwealth, in compliance with the provisions of chapter 18 of the Public Statutes. The work is prefaced by the full text of chapter 11 of the Public Statutes exactly as passed, and also as modified by such direct amendments as have been subsequently made, including chapter 390 of the Acts of 1888 to amend and codify the statutes relating to the collection of taxes, with subsequent amendments. The Compilation which follows is intended to include all the changes, of the character above specified, in the Public Statutes, and the additions thereto, up to the present time, which are now in force; together with a few provisions relating to the duties of assessors, not strictly of the same class, but closely connected.

Yours respectfully,

CHAS. ENDICOTT,  
*Tax Commissioner.*

# LAWS REGULATING TAXATION.

[P. S., ch. 11.]

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**PERSONS AND PROPERTY SUBJECT TO TAXATION.**

**SECTION 1.** A poll-tax shall be assessed, in the manner hereinafter provided, on every male inhabitant of the commonwealth above the age of twenty years, whether a citizen of the United States or an alien, and upon every female citizen of the commonwealth who complies with the provisions of section nine of chapter six.

[See Acts of 1893, ch. 417, §§ 16 to 22 inclusive, as to the duties of assessors in making assessments, street lists, posting, etc.]

Persons subject to a poll-tax.  
G. S. 11, § 1.  
1879, 223, § 2.  
7 Mass. 523.  
4 Met. 181.  
5 Met. 594.

**Property subject to taxation.**  
G. S. 11, § 2.  
4 Met. 564.  
4 Cush. 12.  
4 Gray, 500.

SECT. 2. All property, real and personal, of the inhabitants of this state, not expressly exempted by law, shall be subject to taxation as hereinafter provided.

16 Gray, 293. 6 Allen, 559. 101 Mass. 317. 106 Mass. 540.

**Real estate.**  
G. S. 11, § 3.  
22 Pick. 22.  
10 Cush. 514.  
101 Mass. 328.  
130 Mass. 428.  
149 Mass. 238.

SECT. 3. Real estate, for the purposes of taxation, shall include all lands within this state, and all buildings and other things erected on or affixed to the same.

102 Mass. 79. 118 Mass. 386. 125 Mass. 567.

**Personal estate.**  
G. S. 11, § 4.  
1865, 288, § 15.  
1866, 198, 291, § 2.  
1873, 354.  
1881, 284, § 1.  
1881, 304, § 6.  
16 Pet. 436.  
7 Wallace, 694.  
6 Pick. 98.  
16 Pick. 572.  
4 Met. 181.  
9 Met. 73, 199.  
7 Cush. 600.  
10 Cush. 128.  
10 Allen, 100.  
12 Allen, 309.  
14 Allen, 359.  
99 Mass. 151.  
101 Mass. 333.  
103 Mass. 544.  
105 Mass. 526.  
106 Mass. 540.  
125 Mass. 567.  
138 Mass. 132.  
137 Mass. 111.  
138 Mass. 414.  
139 Mass. 559.

138 Mass. 527.

SECT. 4. Personal estate shall, for the purposes of taxation, include goods, chattels, money and effects, wherever they are, ships and vessels at home or abroad, except as provided in section eight, money at interest, and other debts due the persons to be taxed more than they are indebted or pay interest for, but not including in such debts [*due*] [or indebtedness, 1882, ch. 76] any loan on mortgage of real estate, taxable as real estate, except the excess of such loan above the assessed value of the mortgaged real estate, public stocks and securities [“bonds of all railroads including street railways,” 1888, ch. 363], stocks in turnpikes, bridges, and moneyed corporations, within or without the state, the income from an annuity, from ships and vessels engaged in the foreign carrying trade within the meaning of section eight, and so much of the income from a profession, trade, or employment as exceeds the sum of two thousand dollars a year, and which has accrued to any person during the year ending on the first day of May of the year in which the tax is assessed, but no income shall be taxed which is derived from property subject to taxation: *provided*, that no taxes shall be assessed in any city or town for state, county, or town purposes upon the shares in the capital stock of a corporation organized or chartered in the commonwealth paying a tax on its corporate franchises, under the provisions of chapter thirteen, for any year in which it pays such tax, but such shares shall be taxable to the owners thereof for school district and parish purposes [“and this proviso shall apply to corporations mentioned in the forty-sixth section of said chapter thirteen.” 1887, ch. 228].

### *Property and Persons Exempted from Taxation.*

**Property and polls exempted.**  
G. S. 11, § 5.  
4 Met. 564.  
8 Cush. 237.

SECT. 5. The following property and polls shall be exempted from taxation: —

4 Gray, 500. 1 Allen, 199. 12 Allen, 75. 116 Mass. 193. 7 Wallace, 16.

**First, The property of the United States.** G. S. 11, § 5, cl. 1. *Property of the United States.*

**Second, The property of the commonwealth, except real estate of which the commonwealth is in possession under a mortgage for condition broken.**

*of the com-monwealth.*  
G. S. 11, § 5,  
cl. 2.  
1887, 101.  
116 Mass. 193.

But in all cases where land belonging to the commonwealth, and which on the twenty-eighth day of March, in the year eighteen hundred and sixty-seven, was in the control of the commissioners of public lands, has been sold by any commissioners of the commonwealth, and agreements for deeds given, such land shall be free from taxation for the space of three years thereafter, unless previously built upon or otherwise improved by the purchasers or their assigns; and upon the expiration of three years from the date of such sale, such lands shall be taxable to the purchasers thereof or their assigns, in the same manner and to the same extent as if deeds of the same had been executed and delivered.

[**Third, The personal property of literary, benevolent, charitable, and scientific institutions [and temperance societies, 1886, ch. 231]** incorporated within this commonwealth, and the real estate belonging to such institutions [and societies, 1886, ch. 231] occupied by them or their officers for the purposes for which they were incorporated; but such real estate, when purchased by such a corporation with a view to removal thereto, shall not, prior to such removal, be exempt for a longer period than two years; and the real and personal estate of such corporations formed under general laws shall not be exempt in any case where part of the income or profits of their business is divided among their members or stockholders, or where any portion of such estate is used or appropriated for other than literary, educational, benevolent, charitable, scientific, or religious purposes.]

*Property of certain institu-tions.*  
G. S. 11, § 5, cl. 3.  
1874, 375, § 8.  
1878, 214.  
2 Cush. 611.  
12 Cush. 54.  
99 Mass. 599.  
101 Mass. 319.  
104 Mass. 470,  
481.  
113 Mass. 518.  
114 Mass. 337.  
116 Mass. 181,  
188.  
118 Mass. 164,  
362.  
120 Mass. 212.  
142 Mass. 24.  
145 Mass. 139.  
155 Mass. 329.

By Stat. of 1888, ch. 158, this clause is amended to read as follows:

[“**Third, The personal property of literary, benevolent, charitable and scientific institutions and temperance societies, incorporated within this commonwealth, and the real estate belonging to such institutions and societies occupied by them or their officers for the purposes for which they were incorporated; but such real estate when purchased by such a corporation with a view to removal thereto, shall not, prior to such removal, be exempt for a longer period than two years; but none of the real or personal estate of such corporations organized under general laws shall be exempt when any portion of the income or profits of the business of such corporations is divided among their members or stockholders or used or appropriated for other than literary, educational, benevolent, charitable, scientific or religious purposes.”**]

The third clause of Sect. 5 was further amended by Stat. of 1889, Chap. 465, to read as follows:—

**Third, The personal property of literary, benevolent, charitable and scientific institutions and temperance socie-**

ties incorporated within this Commonwealth, and the real estate belonging to such institutions occupied by them or their officers for the purposes for which they were incorporated; but such real estate when purchased by such a corporation with a view to removal thereto, shall not, prior to such removal, be exempt for a longer period than two years; but none of the real or personal estate of such corporations organized under general laws shall be exempt when any portion of the income or profits of the business of such corporations is divided among their members or stockholders or used or appropriated for other than literary, educational, benevolent, charitable, scientific or religious purposes. The personal property and real estate belonging to grand army and veteran associations incorporated within this Commonwealth for the purpose of owning property for the use and occupation by posts of the grand army of the republic shall, to the extent of twenty thousand dollars, if the same shall be in actual use and occupation by such associations, be deemed to be the property of charitable institutions, and exempt from taxation, provided the net income from said property is used for charitable purposes in aid of needy soldiers of the war of the rebellion, and their dependents.

[Such property is not to be exempt from taxation unless a list and statement of real and personal estate is brought in to the assessors as required by Acts of 1882, ch. 217; 1888, ch. 323.]

Fourth, All property belonging to common school districts, the income of which is appropriated to the purposes of education.

Fifth, The Bunker Hill Monument. G. S. 11, § 5, cl. 5.

Sixth, The wearing apparel and farming utensils of every person; his household furniture not exceeding one thousand dollars in value; and the necessary tools not exceeding three hundred dollars in value of a mechanic.

Seventh, Houses of religious worship owned by a religious society, or held in trust for the use of religious organizations, and the pews and furniture (except for parochial purposes); but portions of such houses appropriated for purposes other than religious worship shall be taxed at the value thereof to the owners of the houses.

Eighth, Cemeteries, tombs, and rights of burial, so long as the same shall be dedicated for the burial of the dead.

Property of  
school districts.  
G. S. 11, § 5, cl. 4.

Bunker Hill  
Monument.

Household  
furniture, etc.  
G. S. 11, § 5, cl. 6.  
1865, 206, § 1.

Churches.  
G. S. 11, § 5, cl. 7.  
1865, 206, § 1.  
1 Met. 538.  
118 Mass. 164.  
147 Mass. 396.

Cemeteries, etc.  
G. S. 11, § 5, cl. 8.  
118 Mass. 354,  
361.

Ninth, The estate, both real and personal, of incorporated agricultural societies. G. S. 11, § 5, cl. 9. 116 Mass. 189, 191. Estate of agricultural societies.

[Such portions of real estate and buildings belonging to incorporated horticultural societies as are used for their offices, libraries and exhibitions shall be exempt from taxation. 1884, ch. 176.]

Tenth, The property, to the amount of five hundred dollars, of a widow or unmarried woman above the age of twenty-one years, of any person above the age of seventy-five years, and of any minor whose father is deceased: *provided*, that the whole estate real and personal of such person does not exceed in value the sum of one thousand dollars, exclusive of property otherwise exempted under the provisions of this section: and *provided, further*, that no property shall be so exempted which in the judgment of the assessors has been conveyed to such person for the purpose of evading taxation. A person aggrieved by such judgment may appeal to the county commissioners within the time and in the manner allowed by law for an appeal in respect of the abatement of taxes. Amended by Stat. 1885, ch. 169, to read as follows:—]

Tenth, The property, to the amount of five hundred dollars, of a widow or unmarried woman above the age of twenty-one years, of any person above the age of seventy-five years, and of any minor whose father is deceased, whether such property be owned by such persons separately, or jointly or as tenant in common with another or others: *provided*, that the whole estate real and personal of such person does not exceed in value the sum of one thousand dollars exclusive of property otherwise exempted under the provisions of this section; and *provided, further*, that no property shall be so exempted which in the judgment of the assessors has been conveyed to such person for the purpose of evading taxation. A person aggrieved by such judgment may appeal to the county commissioners within the time and in the manner allowed by law for an appeal in respect of the abatement of taxes.

Eleventh, Mules, horses and neat cattle, less than one year old; and swine and sheep less than six months old.

Twelfth, The polls and any portion of the estates of persons who by reason of age, infirmity, and poverty, are in the judgment of the assessors unable to contribute fully towards the public charges.

SECT. 6. Any city or town, for the term of ten years next after the fourth day of May, in the year eighteen hundred and seventy-two, may exempt from taxation all property therein used exclusively in the business of manu-

of certain females, aged persons and minors.

G. S. 11, § 5, cl. 10.  
1878, 206, § 1.  
1880, 143.

Young cattle,  
etc.  
G. S. 11, § 5,  
cl. 11.

Polls and estates  
of persons un-  
able to pay.  
G. S. 11, § 5,  
cl. 13.

Property used in  
the manufacture  
of beet-sugar.  
1872, 327.  
111 Mass. 473.  
118 Mass. 386.

facturing beet-sugar (except property of foreign corporations) : *provided*, that this exemption shall not apply to lands upon which beets are raised for the purpose of manufacture.

**Plantations of timber trees.**  
1878, 131.  
1880, 109.  
111 Mass. 473.  
118 Mass. 386.

SECT. 7. All plantations of chestnut, hickory, white ash, white oak, sugar maple, European larch, and pine timber trees, in number not less than two thousand trees to the acre, upon land, (not at the time of said planting woodland or sprout-land, and not having been such within five years previously,) the actual value of which at the time of planting does not exceed fifteen dollars per acre, shall together with the land upon which the same are situated be exempt from taxation for a period of ten years from and after said trees have grown in height four feet on the average subsequently to such planting: *provided*, that said exemption shall not extend beyond the time during which said land is devoted exclusively to the growth of said trees, and that the owner or owners of such plantations appear and prove to the satisfaction of the board of assessors in the towns where the same are located the existence of said conditions.

**Ships and vessels engaged in the foreign carrying trade.**  
1881, 284, §§ 1, 2.

SECT. 8. Ships and vessels engaged in the foreign carrying trade shall not for the purposes of taxation be included in the personal estate of persons to be taxed; but the net yearly income of such ships or vessels shall be taxed to the owner or owners thereof in their places of residence proportionally to their interests therein. No ship or vessel unless actually engaged in such trade, or in port undergoing repairs, shall be deemed to be engaged in said trade within the meaning of this section.

**Same subject.**  
1881, 284, § 3.

SECT. 9. The provisions of the preceding section shall not apply to any ship or vessel, unless her agent or owner, on or before the first day of June in each year, returns in writing under his oath, to the assessors of each city and town in the commonwealth in which an owner of any share or interest in the ship or vessel resided on the first day of May in said year, the name of such owner, the name, class, and tonnage of the ship or vessel, the fact that she was on said first day of May engaged in the foreign carrying trade within the meaning of said section, the share or interest of such owner therein, and the dividends paid him upon his said share or interest during the year ending on said first day of May; and such dividends shall constitute the net yearly income to be taxed to such owner as provided in said section.

SECT. 10. The assessors of any city or town may, on or before the first day of September in any year before the year eighteen hundred and eighty-seven, make a return, under oath, to the tax commissioner, showing the amount of its taxable valuation on the preceding first day of May, the fair cash value of the ships and vessels returned to them in said year under the preceding section, the net income therefrom so returned, the rate of tax on each one thousand dollars in said year, and the increase in said rate arising under the provisions of the two preceding sections; and the commissioner shall thereupon credit to the city or town, as a set-off to any tax or other payment to be made by it to the treasurer of the commonwealth, an amount equal to an assessment of said increase in the rate of tax upon the amount of said taxable valuation. [This section renewed and extended for two years, 1887, ch. 373. Again extended two years, 1889, ch. 286. Again in 1893, ch. 149, five years.]

Taxable valuation of vessels engaged in the foreign carrying trade to be returned to tax commissioner, and set-off allowed, etc.  
1881, 284, §§ 5, 6.

### *Where Polls and Property shall be Assessed.*

SECT. 11. The poll-tax shall be assessed upon each taxable person in the place where he is an inhabitant on the first day of May in each year, except in cases otherwise provided for by law. The poll-tax of minors liable to taxation shall be assessed to, and in the places of the residence of, the parents, masters, or guardians having control of the persons of such minors; but if a minor has no parent, master, or guardian, within the commonwealth, he shall be personally taxed for his poll, as if he were of full age. The poll-tax of every other person under guardianship shall be assessed to his guardian in the place where the guardian is taxed for his own poll. In cities each inhabitant liable to assessment shall be assessed in the ward where he dwells; but no tax shall be invalid by reason of a mistake of the assessors in ascertaining the ward in which a person should be assessed. [Assessors to provide for printing list of assessed polls in pamphlet form for distribution, in towns of over five thousand inhabitants. See 1890, ch. 305.]

Poll-tax, where assessed.  
G. S. 11, § 6.  
1876, 225, §§ 1, 7.  
5 Pick. 369.  
1 Met. 242, 250.  
3 Met. 199.  
4 Met. 181.  
11 Cushing. 362.  
12 Cushing. 44, 52,  
54. •  
2 Gray, 484.  
3 Gray, 483.  
7 Gray, 299.  
9 Gray, 357.  
12 Gray, 21.  
16 Gray, 337.  
4 Allen, 462.  
12 Allen, 111,  
598.  
124 Mass. 53, 132.  
126 Mass. 161,  
166.

SECT. 12. A taxable person who is in a city or town on the first day of May, and who, when inquired of by the assessors thereof, refuses to state where he considers his legal residence to be, shall for the purpose of taxation be deemed an inhabitant of such place. If, when so in-

Person to be taxed where he designates his place of residence to be.  
G. S. 11, § 7.

quired of, he designates another place as his legal residence, said assessors shall notify the assessors of such place, who, upon receiving the notice, shall tax such person as an inhabitant of their city or town. But such person shall not be exempt from the payment of a tax legally assessed upon him in the city or town of his legal domicil.

Real estate,  
where and to  
whom taxed.  
G. S. 11, § 8.  
1881, 304, § 3.  
1 Cush. 142.  
7 Gray, 127, 277.  
4 Allen, 57.  
110 Mass. 47.  
112 Mass. 535.  
115 Mass. 32.  
117 Mass. 238.  
119 Mass. 294.  
127 Mass. 179.  
138 Mass. 434.

[SECT. 13. For the purpose of assessing and collecting taxes the persons appearing of record as owners of real estate shall be held to be the true owners thereof. Taxes on real estate shall be assessed, in the city or town where the estate lies, to the person who is either the owner or in possession thereof on the first day of May. Mortgagors of real estate shall, for the purposes of taxation, except as provided in the three following sections, be deemed owners until the mortgagee takes possession, after which the mortgagee shall, except as provided in said sections, be deemed the owner. This section is amended by Stat. of 1889, ch. 84, to read as follows:—]

139 Mass. 17, 19. 143 Mass. 337.

SECT. 13. For the purpose of assessing and collecting taxes on real estate the persons appearing in the records of the county where the real estate lies as the owners thereof on the first day of May, even if deceased, shall be held to be the true owners thereof. Taxes on real estate shall be assessed, in the city or town where the estate lies, to the person who is either the owner or in possession thereof on the first day of May. Mortgagors of real estate shall, for the purposes of taxation, except as provided in the three following sections, be deemed owners until the mortgagee takes possession, after which the mortgagee shall, except as provided in said sections, be deemed the owner.

Certain mort-  
gages to be tax-  
able as real es-  
tate; mortgagor  
taxable only for  
value over  
amount of such  
mortgages.  
1881, 304, § 1.

SECT. 14. When any person has an interest in [*taxable*] [real estate not exempt from taxation under the provisions of section five of this chapter, see 1882, ch. 175, sect. 3,] as holder of a duly recorded mortgage given to secure the payment of money, the amount of which is fixed and certain, the amount of his interest as mortgagee shall be assessed as real estate in the place where the land lies; and the mortgagor shall be assessed only for the value of said real estate after deducting the assessed value of all such mortgagee's interests therein. When such property is situated in two or more places, the amount of the mortgagee's interest to be assessed in each place shall be proportioned to the assessed value in the respective places of the mortgaged real estate, deducting therefrom the taxable amount of prior mortgages if any thereon.

SECT. 15. If any holder of such a mortgage fails to file in the assessors' office a statement under oath of all his estate liable to taxation under the preceding section, including a statement of the full amount remaining unpaid upon such mortgage and of his interest therein, the amount stated in the mortgage shall be conclusive as to the extent of such interest; but the mortgagee's interests in such real estate shall not be assessed at a greater sum than the fair cash valuation of the land and the structures thereon or affixed thereto; and the amount of a mortgage interest in an estate that has been divided after the creation of such mortgage shall not be required to be apportioned upon the several parts of such estate, except as provided in sections eighty-one to eighty-three inclusive.

Mortgagees  
omitting to file  
statement to be  
concluded by  
statements in  
the mortgage.  
Limit of valua-  
tion. Apportion-  
ment.  
1881, 304, § 2.  
136 Mass. 185.

SECT. 16. Mortgagors and mortgagees referred to in the two preceding sections shall, for the purposes of taxation, be deemed joint owners until the mortgagee takes possession; and until such possession is taken by a first mortgagee, the assessors or the collector of taxes, upon application to any one of them, shall give to any such mortgagee or mortgagor a tax bill showing the whole tax on the mortgaged estate, and the amount included in the valuation thereof as the interest of each mortgagee and of the mortgagor respectively. If the first mortgagee is in possession, he shall be deemed sole owner; and any other mortgagee in possession shall be deemed joint owner with prior mortgagees.

Who to be  
deemed owners  
for purposes of  
taxation. Tax  
bill of mort-  
gaged real  
estate.  
1881, 304, § 2.  
137 Mass. 80.

The four preceding sections are somewhat modified by the Acts of 1882, ch. 175; § 1, as follows:—

[Any mortgagor or mortgagee of real estate may bring into the assessors of the town or city where such real estate lies, within such time as shall be specified for bringing in the lists as provided in section thirty-eight of chapter eleven of the Public Statutes, a statement, under oath, of the amount due on each separate lot or parcel of such real estate, and the name and residence of every holder of an interest therein as a mortgagee or mortgagor. When such property is situated in two or more places, or when a recorded mortgage includes for one sum two or more estates or parts of an estate, an estimate of the amount of the mortgagee's interest in each estate or part of an estate shall be given in such statement. The assessors shall, from such statements or otherwise, ascertain the proportionate parts of such estates that are the interests of mortgagees and mortgagors respectively, and shall assess the same. Whenever, in any case of mortgaged real estate,

a statement is not brought in as herein provided, no tax for the then current year on such real estate shall be invalidated for the reason that a mortgagee's interest therein has not been assessed to him.]

Tenant may recover of landlord taxes paid, unless, etc.  
G. S. 11, § 9.  
115 Mass. 32.

Real estate of person deceased may be assessed to heirs, etc. One liable for whole, with right to contribution.  
G. S. 11, § 10.  
142 Mass. 588.  
152 Mass. 221.

Real estate of person deceased may be assessed to estate of deceased where title is in dispute.  
G. S. 11, § 11.

Personal estate taxed where owner resides.  
G. S. 11, § 12.  
1 Met. 242, 250.  
4 Met. 181.  
10 Cushing. 65.  
6 Gray, 579.  
13 Gray, 488.

Personal estate, except stock in trade, etc., employed in other towns.  
G. S. 11, § 12, cl. 1.  
4 Met. 186.  
4 Cushing. 543.  
10 Cushing. 65.  
6 Gray, 579.  
13 Gray, 491.  
135 Mass. 258.  
137 Mass. 332.  
139 Mass. 17,  
266.  
151 Mass. 243.

Machinery, where taxed, etc.  
G. S. 11, § 12, cl. 2.  
4 Met. 181, 185.  
13 Gray, 488.

SECT. 17. When a tenant paying rent for real estate is taxed therefor, he may retain out of his rent the taxes paid by him, or may recover the same in an action against his landlord, unless there is an agreement to the contrary.

SECT. 18. The undivided real estate of a deceased person may be assessed to his heirs or devisees without designating any of them by name, until they have given notice to the assessors of the division of the estate and of the names of the several heirs or devisees; and each heir or devisee shall be liable for the whole of such tax, and when paid by him he may recover of the other heirs or devisees their respective portions thereof.

SECT. 19. The real estate of a person deceased, the right or title to which is doubtful or unascertained by reason of litigation concerning the will of the deceased, or the validity thereof, may be assessed in general terms to the estate of the deceased; and said tax shall constitute a lien upon the land so assessed, and may be enforced by the sale of the same or a part thereof, as provided for enforcing other liens for taxes on real estate.

SECT. 20. All personal estate, within or without the commonwealth, shall be assessed to the owner in the city or town where he is an inhabitant on the first day of May, except as provided in chapter thirteen and in the following clauses of this section:—

14 Allen, 386.	104 Mass. 587.	124 Mass. 143.
11 Cushing. 382.	7 Gray, 277.	16 Gray, 292, 337.
101 Mass. 329.	109 Mass. 270.	125 Mass. 348.
3 Gray, 494.	9 Gray, 483.	9 Allen, 246.
103 Mass. 279.	112 Mass. 384.	126 Mass. 161, 166.

First, All goods, wares, merchandise, and other stock in trade (except ships or vessels owned by a copartnership), including stock employed in the business of manufacturing or of the mechanic arts, in cities or towns within the commonwealth, other than where the owners reside, whether such owners reside within or without the commonwealth, shall be taxed in those places where the owners hire or occupy manufactories, stores, shops, or wharves, whether such property is within said places or elsewhere on the first day of May of the year when the tax is made.

Second, All machinery employed in any branch of manufactures shall be assessed where such machinery is situated or employed; and, in assessing the stockholders for their shares in any manufacturing corporation, there

shall first be deducted from the value thereof the value of the machinery and real estate belonging to such corporation.

<sup>12 Allen, 75, 316.  
100 Mass. 183.  
150 Mass. 166.</sup>

Third, Horses, mules, neat cattle, sheep, and swine, kept throughout the year in places other than those where the owners reside, whether such owners reside within or without the commonwealth, and horses employed in stages or other vehicles for the transportation of passengers for hire, shall be assessed to the owners in the places where they are kept.

<sup>Horses, etc.  
G. S. 11, § 12,  
cl. 3.  
8 Allen, 330.  
130 Mass. 478.</sup>

Fourth, Personal property belonging to persons under guardianship shall be assessed to the guardian in the place where the ward is an inhabitant, unless the ward resides and has his home without the Commonwealth, in which case it shall be taxed to the guardian in the place where he is an inhabitant.

<sup>Property of  
persons under  
guardianship.  
G. S. 11, § 12,  
cl. 4.  
2 Gray, 494.  
4 Allen, 462.  
105 Mass. 528.</sup>

Fifth, Personal property held in trust by an executor, administrator, or trustee, the income of which is payable to another person, shall be assessed to the executor, administrator, or trustee, in the place where such other person resides, if within the commonwealth, and if he resides out of the commonwealth it shall be assessed in the place where the executor, administrator, or trustee resides, and if there are two or more executors, administrators, or trustees residing in different places, the property shall be assessed to them in equal portions in such places, and the tax thereon shall be paid out of said income. If the executor, administrator, or trustee is not an inhabitant of the commonwealth, it shall be assessed to the person to whom the income is payable, in the place where he resides.

<sup>Trust property,  
etc.  
G. S. 11, § 12,  
cl. 5.  
5 Cush. 93.  
6 Gray, 132.  
6 Allen, 277.  
105 Mass. 528.  
124 Mass. 194.  
140 Mass. 346.  
149 Mass. 62.</sup>

Sixth, Personal property placed in the hands of a corporation or individual as an accumulating fund for the future benefit of heirs or other persons shall be assessed to such heirs or persons, if within the commonwealth, otherwise to the person so placing it, or his executors or administrators, until a trustee is appointed to take charge of such property, or the income thereof.

<sup>Personal prop-  
erty deposited  
to accumulate.  
G. S. 11, § 12,  
cl. 6.  
18 Allen, 267.  
121 Mass. 351.  
123 Mass. 355.  
124 Mass. 193.  
147 Mass. 427.</sup>

Seventh, The personal estate of deceased persons shall be assessed in the place where the deceased last dwelt. Before the appointment of an executor or administrator it shall be assessed in general terms to the estate of the deceased, and the executor or administrator subsequently appointed shall be liable for the tax so assessed in like manner as though assessed to him. After such appointment it shall be assessed to such executor or administrator for the space of three years, unless the same has been distributed and notice of such distribution has been given

<sup>of deceased  
persons.  
G. S. 11, § 12,  
cl. 7.  
1878, 189, § 2.  
5 Pick. 236.  
4 Cush. 1.  
6 Allen, 277.  
97 Mass. 322.  
102 Mass. 348.  
123 Mass. 376.</sup>

to the assessors stating the name, residence, and amount paid to the several parties interested in the estate who are inhabitants of the commonwealth. After three years from the date of such appointment it shall be assessed according to the provisions of the fifth clause of this section.

1882, ch. 165.

[Eighth, Personal property taxable as such, held in trust by an assignee or assignees under the insolvent law or any bankrupt law or under any voluntary assignment for the benefit of creditors, shall be assessed to such assignee or assignees in the place where the insolvent bankrupt or assignor had his principal place of business; and if he had no such place of business, then in the place of his residence.

Ninth, Personal property of joint owners or tenants in common other than partners shall be assessed to such owners, according to their respective interests, in the places where they respectively reside. 1882, ch. 165.]

[Tenth, All machines employed in any branch of manufactures and used or operated under a stipulation providing for the payment of a royalty or compensation in the nature of a royalty for the privilege of using or operating the same, shall be assessed where such machines are situated or employed to the owner or any person, firm or corporation in possession of the same on the first day of May. 1887, ch. 125.]

[Personal property leased for profit taxable where situated. See 1889, ch. 446.]

Separate tax  
upon personal  
property held  
in trust for  
benefit of two or  
more persons.  
1878, 189, § 1.  
124 Mass. 193.

SECT. 21. When personal property belonging to two or more persons under guardianship, or personal property held in trust by an executor, administrator, or trustee, the income of which is payable to two or more persons, or personal property placed in the hands of a corporation or individual as an accumulating fund for the future benefit of two or more heirs or other persons, is assessed under the preceding section by the assessors of any city or town in whole or in part, they shall, upon being requested in writing within the time specified by them for the bringing in of lists under section thirty-eight, and being therein informed of the names, domicils, and proportionate shares of such wards, cestuis que trust, heirs, or other persons, make separate assessments in such manner as to distinguish how much of such personal property is assessed in respect to each. If any such assessment is illegally made, an action at law shall lie to recover back the taxes paid thereon, in the same manner as in other cases of illegal assessment.

SECT. 22. Property held by a religious society as a ministerial fund shall be assessed to the treasurer of the society. If such property consists of real estate, it shall be taxed in the town where it lies; if it consists of personal property, it shall be taxed in the town where such society usually holds its meetings.

SECT. 23. Personal property mortgaged or pledged shall, for the purposes of taxation, be deemed the property of the party who has the possession. 10 Allen, 100.

SECT. 24. Partners in mercantile or other business, whether residing in the same or in different places, may be jointly taxed under their partnership name, in the place where their business is carried on, for all the personal property employed in such business, except ships or vessels, and except property taxed under the provisions of chapter thirteen. If partners have places of business in two or more towns, they shall be taxed in each of such places for the proportion of property employed therein. When so jointly taxed, each partner shall be liable for the whole tax.

SECT. 25. Ships or vessels owned by a partnership shall be assessed to the several partners in their places of residence, proportionally to their interests therein, if they reside within the commonwealth; but the interests of the several partners who reside without the commonwealth shall be assessed to the partnership in the place where its business is carried on.

### *Evasion of Taxation.*

SECT. 26. Whoever in any way directly or indirectly proposes or agrees to an assessment on any specific or limited amount less than he is liable by law to be taxed for, with a view or as an inducement to make any particular place his residence for the purpose of taxation, shall be punished by a fine of one thousand dollars; and any assessor guilty of making or assenting to any such proposal shall be subject to a like penalty.

SECT. 27. Any inhabitant of the commonwealth who escapes taxation by wilfully and designedly changing or concealing his residence, or by any other act, with the intent so to escape, shall be punished by fine of twice the amount of the last tax paid by him; or, if he has paid no tax in the commonwealth, by a fine of not less than one hundred nor more than five thousand dollars. Any person offending against the provisions of this section may

Property held  
as a ministerial  
fund.  
G. S. 12, § 13.  
19 Pick. 542.  
12 Cush. 54.

Personal prop-  
erty mortgaged,  
etc.  
G. S. 11, § 14.  
10 Met. 334.

Partners may be  
jointly taxed for  
stock in trade,  
except ships and  
vessels, and  
property of co-  
partnerships  
held in assign-  
able shares.  
G. S. 11, § 15.  
1878, 275.  
9 Cush. 298.  
7 Gray, 192.  
105 Mass. 526.  
125 Mass. 351.  
130 Mass. 144.  
137 Mass. 227,  
510.  
140 Mass. 346.

Ships of co-  
partners, where  
assessed.  
G. S. 11, § 16.  
1870, 328, § 1.  
10 Gray, 97.

Penalty for  
agreeing to  
assessment on  
limited amount,  
etc., with view  
to residence, etc.  
G. S. 11, § 26.  
12 Allen, 599.

for escaping  
taxation by  
wilfully, etc.,  
changing and  
concealing resi-  
dence. Venue  
of indictment  
therefor.  
1864, 172, §§ 1, 2.  
124 Mass. 56, 148.

on shareholders for fraudulent transfers, etc., to avoid taxation  
1864, 201, § 4.  
13 Gray, 539.

for making false return of property to assessors.  
1869, 190.  
112 Mass. 218.

Keepers of taverns, etc., to give names of persons taxable.  
Penalty.  
G. S. 11, § 21.

Treasurer to send warrants by mail.  
1867, 166.

By what rules all taxes to be assessed.  
G. S. 11, § 18.  
G. S. 24, § 44.  
1870, 332, § 2.  
12 Met. 178.  
117 Mass. 469.  
119 Mass. 77.  
126 Mass. 476.

Rate of taxation in cities and towns where

be indicted and tried in any county where any of the acts or things made criminal by this section are done, or in the county where such person is liable to taxation.

SECT. 28. Any shareholder who, with intent to avoid taxation, fraudulently transfers a share of corporate stock, or fraudulently causes or procures a certificate of a share to be issued to any person other than himself, or in any name other than his own; or refuses to inform, or wilfully misinforms, the corporation respecting his name or residence; or, having changed his residence to another city or town in the commonwealth, wilfully omits to give notice thereof to any corporation in the commonwealth in which he is a shareholder, shall forfeit one-half of the par value of the shares so transferred, issued, or owned by him in the stock of such corporation, to be recovered by an action of tort to the use of the city or town in which he resides.

SECT. 29. Whoever, with intent to defeat or evade the provisions of law in relation to the assessment or payment of taxes, delivers or discloses to an assessor or assistant assessor a false or fraudulent list, return, or schedule of property, as and for a true list of his estates not exempted from taxation, shall be punished by fine not exceeding one thousand dollars, or by imprisonment in jail not exceeding one year.

SECT. 30. Keepers of taverns and boarding-houses, and masters and mistresses of dwelling-houses, shall, upon application of an assessor in the place where their house is situated, give information of the names of all persons residing therein and liable to be assessed for taxes. Every such keeper, master, or mistress refusing to give such information, or knowingly giving false information, shall forfeit twenty dollars for each offence.

### *Manner of Assessing Taxes.*

SECT. 31. When a state tax is to be assessed, the treasurer shall send his warrants for assessing thereof by mail to the assessors of the several cities and towns.

SECT. 32. The assessors shall assess state taxes for which they receive warrants from the treasurer, according to the rules prescribed in this chapter. They shall in like manner assess all county taxes which are duly certified to them, all city or town taxes voted by their places, and all taxes duly voted and certified by school and other districts therein.

SECT. 33. Assessors of cities and towns in which any national bank or banking association is located shall, for

the purpose of ascertaining the rate at which taxes shall be assessed, omit from the valuation upon which the rate is to be based the value of all shares held by non-residents of said cities and towns, and no tax of any city or town shall be invalidated by reason of any excess, in consequence of the provisions of this section, of the amount of such tax over the amount to be raised.

**SECT. 34.** The assessors shall each year assess taxes to an amount not less than the aggregate of all sums appropriated, granted, or lawfully expended by their respective cities or towns since the last preceding annual assessment and not provided for therein; of all sums which are required by law to be raised by taxation by the said cities or towns during said year; and of all sums which are necessary to satisfy final judgments recovered against the said cities or towns; but such assessments shall not include sums for the payment of which cities or towns have lawfully voted to contract debts, and the assessors may deduct from the amount required to be assessed the amount of all the estimated receipts of their respective cities or towns (except from loans or taxes) which are lawfully applicable to the payment of the expenditures of the year, but such deduction shall not exceed the amount of such receipts during the preceding year.

**SECT. 35.** The assessors of any city or town owing debts incurred to obtain funds for subscriptions for the capital stock and securities of any railroad corporation shall each year assess, in addition to the other amounts required by law, a sum sufficient to pay the interest on all debts so incurred, or if there is any income derived from the capital stock or securities of such corporations owned by such city or town as aforesaid, a sum sufficient to pay the excess of such interest payable by such city or town, over such income.

**SECT. 36.** If the assessors neglect to obey a warrant received from the state treasurer, or to assess a county, town, or district tax required by sections thirty-two, thirty-four, or thirty-five, each assessor so neglecting shall forfeit a sum not exceeding two hundred dollars; and the commissioners in the respective counties shall forthwith appoint other suitable persons to assess such tax according to the warrant of the treasurer. The persons so appointed shall take the same oath, perform the same duties, and be liable to the same penalties, provided in the case of assessors of towns.

national banks  
are located.  
1873, 315, § 4.  
101 Mass. 575.

Assessors shall  
each year assess  
taxes to an  
amount not less  
than the aggre-  
gate of all sums  
appropriated,  
etc., since last  
assessment, and  
of all sums  
required during  
said year, etc.  
Certain sums  
not included.  
Deductions.  
1875, 209, § 1.  
114 Mass. 592.

Assessors shall  
also in cities or  
towns owing  
debts for rail-  
road subscrip-  
tions assess  
additional  
amount to pay  
interest on  
same, etc.  
1876, 133, § 3.

Penalty if  
assessors refuse  
to obey warrant,  
etc.  
In such case  
commissioners  
to appoint.  
G. S. 11, § 19.  
1875, 209, § 1.  
1876, 133, § 3.

Town, etc.,  
liable for state  
or county tax  
not assessed.  
G. S. 11, § 20.

SECT. 37. If within five months after the receipt of a warrant from the state treasurer, or of a certificate from the county commissioners requiring the assessment of a tax, such tax is not assessed and certified as the law requires, the amount of the tax may be recovered of the city or town where the neglect occurs, in an action of contract by the treasurer of the state or county respectively.

#### *Notices and Lists.*

Assessors to  
give notice to  
bring in lists,  
etc.  
G. S. 11, § 22.  
1877, 160, § 1.  
12 Met. 211.  
8 Cushing, 55.  
8 Gray, 511.  
1 Allen, 199.  
101 Mass. 89.

Assessors may  
or may not  
require them to  
include real  
estate.  
100 Mass. 272.  
114 Mass. 224.

SECT. 38. Before proceeding to make an assessment, the assessors shall give seasonable notice thereof to the inhabitants of their respective places, at any of their meetings, or by posting up in their city or town one or more notifications in some public place or places, or by some other sufficient manner. Such notice shall require the inhabitants to bring in to the assessors, within a time therein specified, true lists of all their polls and personal estates not exempted from taxation, and may or may not require them to include real estate in their lists of property subject to taxation. Unless such requirement is made in said notice, the omission of real estate from the list brought in to the assessors shall not deprive the owner of such real estate of his right to an abatement of the tax thereon, if he files with his application to the assessors for abatement a list of the real estate on which the same is claimed, with his estimate of the fair cash value of each parcel thereof, and makes oath that said list and estimate are true according to his best knowledge and belief.

[Said notice is to embrace certain provisions of the statutes relating to the assessment of taxes upon mortgaged real estate. See Acts of 1882, ch. 175, and also requirements for returns, by persons and corporations of property held for literary, benevolent, charitable, and scientific purposes, 1882, ch. 217.]

Assessors  
shall verify  
lists by oath of  
the party.  
G. S. 11, § 23.  
1 Allen, 199.

[SECT. 39. The assessors shall in all cases require a person bringing in a list to make oath that the same is true; which oath may be administered by either of the assessors. Amended by Stat. 1891, ch. 381, to read as follows:—]

SECT. 39. The assessors shall in all cases require a person bringing in a list to make oath that the same is true; which oath may be administered by one of the assessors, or by their secretary or head clerk, unless such person is absent from the city or town in which the tax is to be laid during the whole period when it may be made, in which case the oath may be administered by a notary public, the jurat to be duly authenticated by his seal.

SECT. 40. They shall receive as true (except as to valuation) the list brought in by each individual according to the provisions of section thirty-eight, unless on being thereto required by the assessors he refuses to answer on oath all necessary inquiries as to the nature and amount of his property.

to receive lists  
as true, unless,  
etc.  
G. S. 11, § 25.  
12 Met. 211.  
8 Cushing. 64.  
10 Allen, 100.  
112 Mass. 218.

SECT. 41. They shall ascertain as nearly as possible the particulars of the personal estate, and of the real estate in possession or occupation, as owner or otherwise, of any person who has not brought in a list as required by them, and shall make an estimate thereof at its just value, according to their best information and belief.

shall make an  
estimate when  
lists are not  
brought in.  
G. S. 11, § 27.  
8 Cushing. 63.  
2 Allen, 594.

SECT. 42. Such estimate shall be entered in the valuation, and shall be conclusive upon all persons who have not seasonably brought in lists of their estates, unless they can show a reasonable excuse for the omission, and except as provided in sections thirty-eight and seventy-three.

Estimate to be  
conclusive,  
unless, etc.  
G. S. 11, § 28.  
5 Cushing. 97.  
8 Cushing. 63.  
140 Mass. 431.

SECT. 43. In making the estimate provided for in the two preceding sections, the assessors shall specify the amount of each class of personal property mentioned in clauses numbered eighth, ninth, tenth and eleventh, in section fifty-four, and enter the same in column number five, upon the blank books furnished under the provisions of section fifty-two: *provided*, that an error or overestimate of any class shall not be taken into account in determining whether a person is entitled to an abatement, but only the aggregate amount of such estimate.

Estimate of per-  
sonal property,  
how made and  
entered. Error  
in aggregate  
only material.  
1878, 72, § 1.

SECT. 44. After personal property has been legally assessed in any city or town to an executor, administrator, or trustee, an amount not less than last assessed by the assessors of such city or town in respect of such property shall be deemed to be the sum assessable, unless a true list of such property is brought in to the assessors in accordance with the provisions of section thirty-eight.

Amount last  
assessed to an  
executor, etc.,  
to be deemed  
sum assessable,  
unless list is  
brought in.  
1878, 189, § 3.

SECT. 45. The assessors of each place shall at the time appointed make a fair cash valuation of all the estate, real and personal, subject to taxation therein.

Assessors to  
make fair cash  
valuation.  
G. S. 11, § 24.  
4 Gray, 254.

SECT. 46. The assessors, when they think it convenient, may include in the same assessment their state, county, and town taxes, or any two of them.

State, county,  
and town taxes  
in one assess-  
ment.

SECT. 47. In the city of Boston all taxes assessed for city or county purposes may be assessed separately as county taxes and as city taxes, or under the denomination of city taxes only, as the city council from time to time directs. Chelsea, Revere, and Winthrop shall not be taxed for county purposes.

G. S. 11, § 29.  
County and city  
taxes in Boston,  
how assessed.  
Chelsea, etc.,  
exempt from  
county tax.  
G. S. 11, § 30.  
21 Pick. 64.

For state and  
for county taxes  
poll-tax of not  
exceeding \$1  
to be assessed,  
and balance on  
property.  
1879, 209, § 1.  
9 Gray, 38.  
15 Gray, 42.

Assessors may  
add five per  
cent. for con-  
venience of  
apportionment.  
G. S. 11, § 32.  
126 Mass. 97.

Assessors to  
make valuation  
list on books  
furnished by  
the secretary,  
and deposit  
copy in office.  
G. S. 11, § 33.  
1861, 167.  
2 Gray, 298.  
2 Allen, 594.  
102 Mass. 148.

List to exhibit  
valuation, etc.,  
of inhabitants,  
and of non-  
residents.  
G. S. 11, § 34.  
1861, 167,  
21 Pick. 64.  
16 Gray, 293.  
2 Allen, 594.  
102 Mass. 151.

Secretary to  
furnish blank  
books for use  
in assessment  
of taxes.  
1861, 167, § 1.  
1879, 72, § 2.

SECT. 48. The assessors shall in each year assess upon the polls the state and county taxes, and if either of said taxes exceeds in amount the sum of one dollar upon each poll, the excess above said amount, and in every case the whole amount assessed for other purposes shall be apportioned upon property as provided by this chapter. <sup>1</sup> Allen, 319.

SECT. 49. They may add to the amount of a tax to be assessed such sum, not exceeding five per cent. thereof, as any fractional divisions of the amount may render convenient in the apportionment. [By Stat. 1887 this section is amended to read as follows:—]

[They may, for the purposes of avoiding fractional divisions of the amount to be assessed, in the apportionment thereof, add to that amount a sum not exceeding five per cent. thereof. And this overlay is authorized notwithstanding the limit of taxation now provided by law may, by such overlay, be exceeded.]

SECT. 50. They shall make, upon the blank books furnished in accordance with section fifty-two, a list of the valuation and the assessment thereon, and, before the taxes assessed are committed for collection, shall deposit the same, or an attested copy thereof, in their office, or if there is no office, with their chairman, for public inspection. <sup>127 Mass. 502.</sup>

SECT. 51. The first part of the list shall exhibit the valuation and assessment of the polls and estates of the inhabitants assessed.

The second part shall exhibit the valuation and assessment of the estates of non-resident owners, and shall contain in separate columns the following particulars: to wit,—

The names of the non-resident owners of the property assessed, or such description of them as can be given.

Their places of abode, if known.

The description of their estate.

The true value of such estate.

The tax thereon.

SECT. 52. The secretary of the commonwealth shall furnish to each city and town, on or before the first day of May in each year, suitable blank books for the use of the assessors in the assessment of taxes, which books shall contain blank columns numbered from one to twenty-three, inclusive, with uniform headings for a valuation list, and blank tables for aggregates, in the following form:—

[Modified by Stat. 1887, ch. 86; also, by Stat. 1890, ch. 242.]

## VALUATION LIST FOR THE

OF

MAY 1, 18

Form of valuation list.

Col. No. 1	2	3	4	5	6	7	8	9	10	11	12	13
Buildings of all kinds described by naming their uses.												
Buildings of all kinds described by naming their uses.												
Value of buildings exclusive of land.												
Description by name or otherwise of each and every lot of land owned by each person.												
Number of buildings exclusive of land.												
Value of each person's whole stock in trade.												
Description of taxable cash assets.												
Value of cash assets.												
Value of machinery used in manufacturing establishments.												
Number of live stock, each kind specified separately.												
Value of each kind of live stock.												
Description of all other ratable personal estate not before named.												
Value of same.												
Superficial feet of wharf.												
Aggregate value of real estate.												
Total tax on real estate.												
Total cash tax on polls, personal and real estate.												
Total cash tax on polls.												
Tax on each poll.												
Total value of personal estate.												
Total value of real estate.												
Total valuation, May 1, 18-												
Total tax for state, county, city and town purposes.												
Rate per cent. of total tax or rate per \$1,000.												

14	15	16	17	18	19	20	21	22	23
Buildings of all kinds described by naming their uses.									
Buildings of all kinds described by naming their uses.									
Value of buildings exclusive of land.									
Description by name or otherwise of each and every lot of land owned by each person.									
Number of buildings exclusive of land.									
Value of each person's whole stock in trade.									
Description of taxable cash assets.									
Value of cash assets.									
Value of machinery used in manufacturing establishments.									
Number of live stock, each kind specified separately.									
Value of each kind of live stock.									
Description of all other ratable personal estate not before named.									
Value of same.									
Superficial feet of wharf.									
Aggregate value of real estate.									
Total tax on real estate.									
Total cash tax on polls, personal and real estate.									
Total cash tax on polls.									
Tax on each poll.									
Total value of personal estate.									
Total value of real estate.									
Total valuation, May 1, 18-									
Total tax for state, county, city and town purposes.									
Rate per cent. of total tax or rate per \$1,000.									

TABLE OF AGGREGATES.

FOR THE OF OF POLLS, PROPERTY, TAXES, ETC., AS ASSESSED MAY 1, 18

Form of table of aggregates.  
1861, 167, § 1.  
1879, 72, § 2.

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Total number of polls.															
Tax on each poll.															
Total value of personal estate.															
Total value of real estate.															
Total valuation, May 1, 18-															
Total tax for state, county, city and town purposes.															
Rate per cent. of total tax or rate per \$1,000.															
Secured by mortgage.															
Unsecured.															
Total.															
Money on hand including deposits taxable.															
Public stocks and securities.															
Stocks in corporations without the state.															
Total number of horses.															
Total number of cows.															
Total number of sheep.															
Total number of dwelling-houses.															
Total number of acres of land assessed in the city or town.															

[In addition to the items in this table, Stat. of 1885, ch. 106, requires the total number of neat cattle other than cows and the total number of swine assessed; and Stat. of 1886, ch. 56, the total number of tax-payers, the number of persons paying a tax on property and the number of persons paying a poll-tax only. Stat. of 1887, ch. 86, and Stat. 1891, ch. 75, adds to the number of items in the table.]

How blanks in  
lists shall be  
filled.  
1861, 187, § 2.  
1879, 72, § 1.

127 Mass. 502.

SECT. 53. The assessors shall enter in the books furnished in accordance with the provisions of the preceding section the valuation and assessment of the polls and estates of the inhabitants assessed, in the following order:—

In Column Number One. The names of the inhabitants or parties] [persons] assessed for polls or estates [with the street or number of their residence 1883, ch. 41].

In Column Number Two. The number of polls for which any person named in the preceding column is taxable.

In Column Number Three. The total amount of cash tax on polls.

In Column Number Four. The amount of each person's whole stock in trade, including all goods, wares and merchandise, at home or abroad, of ratable estate, whether paid for or otherwise.

1879, 72, § 1.  
138 Mass. 529.

In Column Number Five. A description of all ratable cash assets; viz., Amount of money at interest more than the person assessed pays interest for, including public securities; the amount of money on hand, including deposits in any bank or in any savings bank, which is not exempted by law from taxation; the number of shares of stock which are taxable, with the name of the corporation, in any bank, railroad, insurance, manufacturing, or other incorporated company; and a specification of the amount of each class of personal property mentioned in clauses eighth, ninth, tenth, and eleventh of the following section.

In Column Number Six. The true ratable value of the several items enumerated in the preceding column, placed opposite the description of said property or shares.

In Column Number Seven. The true value of machinery used in all kinds of manufacturing establishments, including steam-engines, etc., the value of such machinery to be entered opposite the description of the building in which it is used.

In Columns Number Eight and Nine. The whole number of taxable live stock, including horses, mules, asses,

oxen, cows, steers, heifers, sheep, and swine; each kind to be stated separately, with the value affixed to each.

In Columns Number Ten and Eleven. A description of all other ratable personal estate, not before enumerated, such as carriages, income, plate, furniture, tons of vessels, etc., with the true value of the same.

In Column Number Twelve. The aggregate of each person's ratable personal estate.

In Column Number Thirteen. The total tax on each person's personal estate.

In Column Number Fourteen. Buildings of all kinds shall be described in the following order:—

Dwelling-houses; barns; shops of all kinds, naming their uses; stores; warehouses; distil-houses; breweries, tanneries and other manufactories of leather; ropewalks; grist-mills; saw-mills; steam and other mills not above enumerated; cotton factories, with the number of spindles and looms used in the same; woollen factories, with the number of sets of cards used in the same; linen factories, with the number of spindles and looms; print-works; bleacheries; gas-works; paper-mills; card-factories; boot and shoe factories; india-rubber factories; carriage and car factories; piano-forte and musical instrument factories; sewing-machine factories; chair, pail, tub, and other wooden-ware factories; oil factories; glass factories; all kinds of iron and brass works, and other buildings not above named.

In Column Number Fifteen. The true value of buildings enumerated in the preceding column placed opposite the description of the same, including water wheels; such value to be exclusive of land and water power and of the machinery used in said buildings.

In Columns Number Sixteen, Seventeen, and Eighteen. A description by name or otherwise of each and every lot of land assessed, the same placed opposite the name of the person or party to whom it is taxable, with the number of acres or feet in each lot, the number of quartz-sand beds, of stone quarries and ore beds, and the true value thereof.

In Columns Number Nineteen and Twenty. The number of superficial feet of wharf, and the total value of the same.

In Column Number Twenty-one. The aggregate value of each person's taxable real estate.

In Column Number Twenty-two. The total tax on real estate.

In Column Number Twenty-three. The aggregate cash tax assessed to each person on polls, and on personal and real estate.

Assessors to  
fill up table of  
aggregates, and  
in certain years  
deposit copy in  
secretary's  
office.  
1861, 167, § 3.  
1879, 72, § 2.

SECT. 54. The assessors shall fill up the table of aggregates by an enumeration of the necessary items included in the lists of valuation and assessments required by the preceding section, and shall, on or before the first day of October in each [of the first four years of each decade] [year 1883, c. 91] deposit in the office of the secretary of the commonwealth an attested copy of the same, containing,—

- First, The total number of polls.
- Second, The tax on each poll.
- Third, The total value of personal estate.
- Fourth, The total value of real estate [specifying the value of buildings exclusive of land and of land exclusive of buildings. Stat. 1886, ch. 56].
- Fifth, The total valuation of the city or town.
- Sixth, The total tax for state, county, and town purposes.
- Seventh, The rate per cent. of total tax, or rate per one thousand dollars.
- Eighth, The total amount, as valued for assessment, of money at interest, and other debts due the persons assessed more than they are indebted or pay interest for, specifying how much of said amount is debts secured by mortgage, and how much unsecured debts.
- Ninth, The amount of money on hand, including deposits taxable, as valued for assessment.
- Tenth, The total amount of public stocks and securities, as valued for assessment.
- Eleventh, The total amount of stocks in corporations without the state, as valued for assessment.
- Twelfth, The total number of horses assessed.
- Thirteenth, The total number of cows assessed.
- Fourteenth, The total number of sheep assessed.
- [Fifteenth], The total number of dwelling-houses assessed.
- [Sixteenth], The total number of acres of land assessed in the city or town.
- [Fifteenth, The total number of neat cattle other than cows.
- Sixteenth, The total number of swine assessed. The above clauses numbered 15 and 16 are changed to Seventeenth and Eighteenth. Acts 1885, ch. 106.]

[Nineteenth, The total number of taxpayers.  
Twentieth, The number of persons paying a tax on property.

Twenty-first, The number of persons paying a poll-tax only. Stat. 1886, ch. 56.]

[By Stat. of 1887, ch. 86, sect. 54 is amended to read as follows:—]

[The assessors shall fill up the table of aggregates by an enumeration of the necessary items included in the lists of valuation and assessments required by law, and shall on or before the first day of October in each year deposit in the office of the secretary of the commonwealth an attested copy of the same, containing,—

First, The number of persons assessed, specifying the number assessed for a tax on property and the number assessed for a poll-tax only.

Second, The number of polls, specifying the number of male polls and the number of female polls.

Third, The tax on each poll, male or female.

Fourth, The value of personal estate, specifying the value of the same excluding resident bank stock and the value of resident bank stock.

Fifth, The value of real estate, specifying the value of buildings exclusive of land and of land exclusive of buildings.

Sixth, The total valuation of the city or town.

Seventh, The tax for state, county and city or town purposes including overlayings, specifying the amount assessed on personal estate, on real estate and on polls.

Eighth, The rate of total tax per one thousand dollars.

Ninth, The amount as valued for assessment, of money at interest, and other debts due the persons assessed more than they are indebted or pay interest for, specifying the amount secured by mortgage and the amount unsecured.

Tenth, The amount of money on hand, including deposits taxable, as valued for assessment.

Eleventh, The amount of public stocks and securities, as valued for assessment.

Twelfth, The amount of stocks in corporations without the state, as valued for assessment.

Thirteenth, The number of horses assessed.

Fourteenth, The number of cows assessed.

Fifteenth, The number of sheep assessed.

Sixteenth, The number of neat cattle, other than cows, assessed.

Seventeenth, The number of swine assessed.

Eighteenth, The number of dwelling-houses assessed.

Nineteenth, The number of acres of land assessed: *provided*, that in the case of the city of Boston said copy may be deposited in the office of the secretary on or before the first day of November in each year.

SECT. 2. The blank forms of the tables of aggregates provided for by section fifty-two of said chapter shall be so changed as to include the items provided for by the foregoing section.]

Sect. 54 of chap. 11, Pub. Sts., as amended by chap. 86 of 1887, is further amended by St. 1890, chap. 242, which see.

SECT. 55. [The assessors shall make similar returns in the first four years of the last half of each decade; and in every fifth and tenth year of each decade they shall deposit in the office of the secretary of the commonwealth, on or before the first day of October, a certified copy, under oath, of the assessors' books of those years; and said books thus deposited shall contain an aggregate sheet properly filled in accordance with the provisions of the preceding section, which shall be in like manner certified by the assessors, and in every fifth and tenth year of each decade the secretary shall furnish duplicate copies of blank books to the cities and towns for the foregoing purpose: *provided*, that, in the case of the city of Boston, the returns required by this section to be deposited in the office of the secretary may be thus deposited on or before the first day of November, in the several years respectively.]

Sections fifty-four and fifty-five are modified by Acts of 1883, chap. 91, sect. 1, as follows: [The returns and copies of assessors' books, required by sections fifty-four and fifty-five of chapter eleven of the Public Statutes to be deposited by the assessors in the office of the secretary of the commonwealth, shall hereafter be deposited as follows: Copies of the assessors' books shall be deposited as required on or before the first day of October in the year eighteen hundred and eighty-three and in every third year thereafter; and in such years the secretary of the commonwealth shall furnish to the cities and towns duplicate copies of the blank books required for this purpose. And the other returns specified in said sections shall be so deposited on or before the first day of October in each year; *provided*, that in the case of the city of Boston all said returns may be deposited in the office of the secretary

*Assessors to  
make similar  
returns and  
deposit copies  
with aggregate  
sheets in certain  
other years.  
1881, 167, § 3.*

*Boston returns,  
when to be  
deposited.*

on or before the first day of November in the several years respectively.]

SECT. 56. If the assessors of any city or town neglect to comply with the requirements of either of the three preceding sections, each assessor so neglecting shall forfeit a sum not exceeding two hundred dollars.

Penalty on  
assessors for  
neglect.  
1861, 167, § 5.

SECT. 57. The secretary of the commonwealth shall cause to be printed and bound in the books to be furnished for the use of the assessors a copy of this and of the five preceding sections and such certificates as are required by law to be signed by the assessors, together with such explanatory notes as may by him be deemed expedient for the purpose of securing uniformity of returns under the several headings; and he shall compile and cause to be printed annually for the use of the general court the aggregate returns from the cities and towns arranged by counties, so as to exhibit the total valuation of the towns, cities, counties, and state.

Secretary to  
cause copy of  
certain sections,  
etc., to be  
printed in  
assessment  
books, and to  
compile and  
print aggregate  
returns.  
1861, 167, § 4.

SECT. 58. The assessors shall enter upon the valuation list, in the appropriate columns, after the enumeration of the taxable persons and estates therein contained, a statement and description of all the property and estate, and the fair ratable value thereof, situate in their respective cities or towns, or which would be taxable there but for the provisions of the third, seventh, and ninth divisions of section five, with the names of the persons or corporations owning the same and the purpose for which it is used, which are exempted from taxation by the provisions of law aforesaid, with a reference to the law by which such exemption is allowed.

Assessors to  
enter certain  
exempted prop-  
erty on valua-  
tion list.  
1874, 227, § 1.

SECT. 59. The assessors, or other persons empowered to assess the taxes in a city or town, shall, at the close of said valuation list, subscribe and take the following oath: —

Valuation list to  
be sworn to by  
assessors.  
G. S. 11, § 36.

"We (the assessors, or mayor and aldermen, as the case may be, of \_\_\_\_\_) do hereby solemnly swear that the foregoing list is a full and true list of the names of all persons known to us, who are liable to taxation in \_\_\_\_\_ (here insert the name of the city or town) during the present year, and that the real and personal estate contained in said list, and assessed upon each individual in said list, is a full and accurate assessment upon all the property of each individual liable to taxation, at its full and fair cash value, according to our best knowledge and belief."

SECT. 60. Any assessor or other person assessing taxes in a city or town, who omits to take and subscribe the oath prescribed in the preceding section, shall be punished by a fine of ten dollars; but the omission to take

Penalty on as-  
sessor omitting  
to take oath.  
G. S. 11, § 37.

and subscribe said oath shall not prevent the collection of a tax otherwise legally assessed.

[The oath of office by an assessor is prescribed in ch. 417, Acts of 1893, as follows:—

SECT. 10. Every assessor, assistant assessor and other person chosen to assess taxes, or to determine or assist in determining the value of property for the purpose of taxation, shall, before entering upon the duties of his office, take an oath which shall be in substance as follows:—

I, having been chosen to assess taxes and estimate the value of property for the purpose of taxation for the town (or city) of \_\_\_\_\_ for the year (or years) ensuing, do swear that I will truly and impartially, according to my best skill and judgment, assess and apportion all such taxes as I may during that time assess; that I will neither overvalue nor undervalue any property subject to taxation, and that I will faithfully discharge all the duties of said office.

Every assessor, assistant assessor and other person chosen to assess taxes, or to determine the value of property for the purposes of taxation, who having notice of his election neglects to take the oath above prescribed, before entering upon the duties of such office, shall forfeit a sum not exceeding fifty dollars.]

[For other duties and liabilities of assessors, see Stat. 1885, ch. 355.]

#### *Collector's List and Warrant.*

Contents and  
form of list  
committed to  
collectors.  
G. S. 11, § 35.  
1877, 235, § 1.  
9 Pick. 97.  
2 Gray, 298.

SECT. 61. The tax-list committed to the collectors [“shall contain a certificate signed by the assessor, which shall state what portion of the amount assessed upon each poll is assessed as state tax and county tax respectively, and” Stat. 1889, ch. 467] shall be, in substance, as follows:—

Names.	No. of Polls.	Poll-tax.	Tax on Real Estate.	Tax on Personal Property.	Total.	Time when Paid.
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#### NON-RESIDENTS.

Names.	Places of abode, if known.	Tax.
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Assessors in cities shall enter in the list opposite the name of each resident male tax-payer the place of his residence, giving the street and number if possible.

[See Stat. 1888, ch. 390, §§ 3, 4, for additional provisions relating to collectors' books.]

Assessors to  
commit lists to  
collectors, etc.,  
but, in towns,  
not until bonds  
have been given.  
G. S. 11, § 38.  
1879, 157, § 1.  
18 Met. 86.

SECT. 62. The assessors shall, within a reasonable time, commit said tax-list with their warrant to the collector, or, if no collector is chosen, to a constable, or, if there is no constable, to the sheriff or his deputy, for collection; but the assessors of a town shall not commit a

tax-list to the collector until the bonds of such collector and of the town treasurer have been given and approved as required by law.

SECT. 63. The warrant shall specify the duties of the collector as prescribed by law in the collection of taxes; the times when and the persons to whom he shall pay them in; shall be substantially in the form heretofore used; and need not be under seal. 127 Mass. 502. Contents and form of warrant.  
G. S. 11, § 39.  
See 1785, 50, § 6.  
1 Met. 328.  
6 Met. 345.  
13 Met. 85.  
99 Mass. 472.

SECT. 64. When a warrant issued for the collection of taxes is lost or destroyed, the assessors may issue a new warrant therefor, which shall have the same force and effect as the original warrant. If warrant is lost, etc., new one may issue.  
G. S. 11, § 40.

### *Discount and Interest on Taxes.*

SECT. 65. Towns at their annual meetings, and city councils of cities, may allow a discount of such sums as they think expedient to persons making voluntary payment of their taxes within such periods of time as they prescribe. In such case the collectors shall make such discount accordingly. Discounts.  
G. S. 11, § 41.  
13 Gray, 476.  
2 Allen, 594.

SECT. 66. When such discount is allowed, the assessors, at the time of committing their warrant to the collector, shall post up, in one or more public places within the city or town, notice of the rates of discount. When discount allowed, rates to be posted up.  
G. S. 11, § 42.  
11 Cushing, 289.

SECT. 67. When a city or town has fixed a time within which taxes assessed therein shall be paid, such city by its city council, and such town at the meeting when money is appropriated or raised, may vote that, on all taxes remaining unpaid after a certain time, interest shall be paid at a specified rate, not exceeding seven per cent. per annum; and may also vote that, on all taxes remaining unpaid after another certain time, interest shall be paid at another specified rate, not exceeding seven per cent. per annum; and the interest accruing under such vote or votes shall be added to, and be a part of, such taxes. Interest to be added, when so voted by cities and towns.  
1873, 225, § 1.  
1879, 74.

SECT. 68. The legal voters of any fire, water supply, improvement, or school district, organized under the laws of the commonwealth, may, at the meeting when money is appropriated or raised, fix a time within which all taxes assessed therein shall be paid, and may vote that, on all taxes remaining unpaid after a certain time, interest shall be paid at a specified rate, not exceeding one per cent. per month, and may also vote that, on all taxes remaining unpaid after another certain time, interest shall be paid also to district taxes, when voted by the district.  
1878, 185, § 1.

at another specified rate, not exceeding one per cent. per month; and the interest accruing under such vote or votes shall be added to and be a part of such taxes.

### *Abatements.*

**Abatements.**  
G. S. 11, § 43.  
1877, 160 § 2.  
6 Pick. 98.  
12 Pick. 7.  
21 Pick. 64.  
5 CUSH. 93.  
8 CUSH. 55, 66.  
2 Gray, 494.  
13 Gray, 321.  
12 Allen, 612.  
102 Mass. 348.

13 Allen, 119. 100 Mass. 270. 125 Mass. 348. 130 Mass. 480.  
114 Mass. 224. 8 Gray, 509. 3 Allen, 546. 134 Mass. 431.

SECT. 69. A person aggrieved by the taxes assessed upon him may apply to the assessors for an abatement thereof; and, if he makes it appear that he is taxed at more than his just proportion, or upon an assessment of any of his property above its fair cash value, they shall make a reasonable abatement.

[Section sixty-nine of chapter eleven of the Public Statutes is hereby amended by adding thereto the following, to wit:— and tenants paying rent for real estate, and under obligation to pay the whole or a major part of the taxes assessed thereon, may so apply in behalf of the owner and with like effect as if the owner had applied, and no neglect of the owner to file a list of his estate shall prevent the making an abatement, if it appears that such abatement should be made. 1888, ch 315.]

SECT. 70. If legal costs have accrued before making such abatement, the person applying for the abatement shall pay the same.

SECT. 71. If the assessors refuse to make an abatement to a person, he may, within one month thereafter, make complaint thereof to the county commissioners by filing the same with their clerk, and if upon a hearing it appears that the complainant is overrated, the commissioners shall make such an abatement as they deem reasonable [and may make such order relating to the payment of costs as justice may seem to require: *provided*, that taxable costs shall not be allowed to a party who has failed to file a list of his estate as required by law. See 1882, ch. 218].

[By Statute of 1890, ch. 127, appeals from assessors may be made to the Superior Court.]

SECT. 72. No person shall have an abatement unless he has filed with the assessors a list subscribed by him of his estate liable to taxation, and made oath that such list is full and accurate according to his best knowledge and belief. When such list is not filed within the time specified by the assessors for bringing it in, no complaint from the judgment of the assessors shall be sustained by the

**Costs before applying for abatement to be paid.**  
G. S. 11, § 44.

**Appeal if assessors refuse to abate.**  
G. S. 11, § 45.  
8 CUSH. 55.  
6 ALLEN, 131.  
114 Mass. 224.

**No abatement, unless, etc.**  
G. S. 11, § 46.  
4 Pick. 399.  
5 CUSH. 97.  
6 CUSH. 477.  
5 Gray, 385.  
8 Gray, 509.  
1 Allen, 199.  
3 Allen, 546.  
101 Mass. 87.  
112 Mass. 218.

county commissioners, unless they are satisfied that there was good cause why such list was not seasonably brought in, and except in cases provided for in the following section.

SECT. 73. When the assessors of a city or town have given notice to the inhabitants thereof to bring in true lists of their polls and estates not exempt from taxation, in accordance with the provisions of section thirty-eight, no part of the tax assessed on personal estate to a person who did not within the time specified therefor bring in such list shall be abated unless such tax exceeds by more than fifty per cent. the amount which would have been assessed to that person on personal estate if he had seasonably brought in said list; and if said tax exceeds by more than fifty per cent. the said amount, the abatement shall be only of the excess above said fifty per cent. : *provided*, that this section shall not affect any person who can show a reasonable excuse for not seasonably bringing in such list.

SECT. 74. No abatement shall be allowed to a person unless he makes application therefor within six months after the date of his tax bill.

SECT. 75. A person having an abatement made, shall, if his tax has been paid, be reimbursed out of the treasury of the city or town to the amount of the abatement allowed, together with all charges, except the legal costs provided for in section seventy.

SECT. 76. Every person whose tax is abated shall be entitled to a certificate thereof from the assessors, clerk of the commissioners, or other proper officer.

SECT. 77. When a collector is satisfied that any poll-tax, or tax upon personal property, or any portion of said tax, committed to him or to any of his predecessors in office for collection, cannot be collected by reason of the death, absence, poverty, insolvency, bankruptcy, or other inability to pay of the person assessed, he shall notify the assessors thereof in writing, stating the reason why such tax cannot be collected, and verifying the same by oath. In such case the assessors, after due inquiry into the circumstances, may abate such tax or any part thereof. When such abatement is made, the assessors shall certify the same in writing to the collector; and said certificate shall discharge the collector from further obligation to collect the tax so abated. But no poll-tax shall be abated under the provisions of this section within the calendar year in which the tax is assessed.

*Abatements not to be made if no list is brought in to assessors, except in certain cases.*  
1865, 121.  
101 Mass. 87.

*to be applied for within six months.*  
G. S. 11, § 47.

*Amount of abatement to be reimbursed if tax has been paid.*  
G. S. 11, § 48.  
13 Gray, 223.  
3 Allen, 546, 550.

*Party entitled to certificate.*  
G. S. 11, §§ 40, 49.

*If poll-tax or tax on personal property cannot be collected, assessors to be notified by collector of reason.*  
1878, 77.  
1879, 43.

*Assessors may abate the tax, etc.*

*No poll-tax to be abated within one year of assessment.*

*Omitted Assessments.*

**Omitted estates,  
how taxed.**  
1868, 330.  
1878, 272.  
189 Mass. 562.  
137 Mass. 562.

SECT. 78. When the assessors of any city or town, [after their rate of taxation has been declared, and whether before or] (Stat. 1886, ch. 85) after their warrant has been committed to the collector, discover that the real or personal estate of any person, to an amount not less than one hundred dollars and liable to taxation, has been omitted from the last annual assessment of taxes in such city or town, said assessors shall proceed forthwith to assess such person for such estate in like manner as he should have been assessed in such last annual assessment. The taxes so assessed shall be entered in the tax-list of the collector of the city or town, and he shall collect and pay over the same in the manner specified in his warrant: *provided*, that such tax shall not be assessed after the fifteenth day of [September]. [December. Stat. 1886, ch. 85.] No tax shall be invalidated for the reason that, in consequence of the provisions of this section, the whole amount of the taxes assessed in a city or town exceed the amount authorized by law to be raised.

[By Stat. 1888, ch. 362, this section is amended to read as follows:—]

Section seventy-eight of chapter eleven of the Public Statutes as amended by chapter eighty-five of the acts of the year eighteen hundred and eighty-six is hereby further amended, to read as follows:— *Section 78.* When the assessors of any city or town after their rate of taxation has been declared and whether before or after their warrant has been committed to the collector, discover that the real or personal estate of any person, to an amount not less than one hundred dollars and liable to taxation, has been omitted from the last annual assessment of taxes in such city or town, said assessors shall between the fifteenth and twentieth days of December next ensuing, proceed to assess such person for such estate in like manner as he should have been assessed in such last annual assessment. The taxes so assessed shall be entered in the tax list of the collector of the city or town, and he shall collect and pay over the same in the manner specified in his warrant. No tax shall be invalidated for the reason that, in consequence of the provisions of this section, the whole amount of the taxes assessed in a city or town exceed the amount authorized by law to be raised.

[See Stat. 1893, ch. 417, sects. 16 to 22 inclusive, for assessment of poll-taxes and lists of persons assessed, etc.]

*Re-assessment of Taxes.*

**Invalid taxes,  
except poll-  
taxes, may be  
re-assessed.**

SECT. 79. Every tax, except a poll-tax, which is invalid by reason of any error or irregularity in the assessment, and which has not been paid, or which has been

recovered back, may be re-assessed by the assessors for the time being, to the just amount to which, and upon the estate or to the person to whom, such tax ought at first to have been assessed, whether such person has continued an inhabitant of the same city or town or not. No alienation of the real estate assessed shall defeat such re-assessment, if made within two years after the tax first assessed was committed to the collector.

SECT. 80. Taxes re-assessed under the provisions of the preceding section shall be committed to, and collected and paid over by, the collector for the time being, in the same manner as other taxes, except that the name of the person to whom the taxes were originally assessed shall be stated in the warrant; and the bond of such collector shall apply to such re-assessed taxes.

G. S. 11, § 58.  
1881, 304, § 7.  
13 Allen, 289.  
99 Mass. 32, 208.  
102 Mass. 73.  
112 Mass. 535.  
121 Mass. 177.  
126 Mass. 97.  
127 Mass. 502.  
129 Mass. 377.  
136 Mass. 132.

Invalid taxes,  
how committed,  
collected, etc.  
Name of person  
originally  
assessed to be  
stated in war-  
rant.  
1870, 394.  
102 Mass. 72.  
136 Mass. 132.

#### *Apportionment of Taxes on Real Estate Subsequently Divided.*

SECT. 81. When the assessors have assessed a tax upon real estate, and such real estate has been subsequently divided by sale, mortgage, or otherwise, by the owner or owners thereof or upon a petition for partition, and record of such division has been made in the registry of deeds for the county or district in which such real estate is situated, the assessors at any time before said real estate has been sold for payment of taxes, upon the written request of the owner or mortgagee of any portion thereof, shall apportion said tax, and the costs and interest accrued thereon, upon the several parcels into which said real estate has been divided, in proportion to the value of each parcel thereof, and only the portion of said tax, interest, and costs so apportioned upon any such parcel shall thereafter continue to be a lien upon it; and no one of such owners or mortgagees shall thereafter be liable for the tax so apportioned upon any parcel not owned in whole or in part by him at the time of such apportionment.

Real estate  
divided after  
taxation may  
have tax ap-  
portioned upon the  
several portions  
thereof.  
1878, 182, § 1.

SECT. 82. Notice of the request and of the time appointed for such apportionment shall be sent by mail by the assessors to all persons interested in said real estate whose addresses are known to them.

Parties inter-  
ested to be  
notified.  
1878, 182, § 2.

SECT. 83. Any person aggrieved by any action of the assessors under the two preceding sections may within seven days thereafter appeal to the board to which appeal

Appeal.  
1878, 182, § 3.

may be made in case of an over-assessment, and the action of said board upon such appeal shall be final.

#### *Illegal Assessments.*

Taxes, invalid,  
to be void only  
to extent of  
illegal excess.  
G. S. 11, § 54.  
99 Mass. 208.  
126 Mass. 97, 98.  
127 Mass. 502.

SECT. 84. If, through any erroneous or illegal assessment or apportionment of taxes, a party is assessed more or less than his due proportion, the tax and assessment shall be void only to the extent of the illegal excess.

#### *Additional Duties of Assessors.*

Assessors re-  
quired to fur-  
nish information  
as to personal  
property of per-  
sons changing  
domicil; to file  
information re-  
ceived, and not  
tax less, etc.  
1866, 170.  
1881, 25.

SECT. 85. When any person liable to be taxed for personal property has changed his domicil, the assessors of the city or town where he resides shall require forthwith of the assessors of the city or town where such person was last taxed as an inhabitant such written statement of any facts within their knowledge as will assist in determining the value of the personal estate of such person, and also the amount he was last assessed in such city or town; and such information shall be furnished by the assessors of the city or town where he was last taxed or assessed. When the assessors of any city or town have received notice from the assessors of any other city or town of the amount at which a person, who had been an inhabitant thereof, was last taxed on personal property, such notice shall be filed in their office, subject to public inspection; and they shall not assess such person upon any less amount of personal estate than he was last assessed, until he has brought in to such assessors a list of his personal estate in accordance with the provisions of sections thirty-eight and thirty-nine. Whoever neglects to perform any duty imposed upon him by this section shall be punished by fine of not less than fifty nor more than two hundred dollars.

to return to tax  
commissioner  
names of cor-  
porations, state-  
ment of works,  
etc., and of  
amount of taxes  
laid.  
1865, 283, § 1.  
1878, 276.  
13 Allen, 391.

SECT. 86. The assessors shall annually, on or before the first Monday of August, return to the tax commissioner the names of all corporations, except banks of issue and deposit, having a capital stock divided into shares, chartered by the commonwealth or organized under the general laws for the purposes of business or profit, and established in their respective cities and towns or owning real estate therein, and of all companies, copartnerships, and other associations having a location or place of business in this commonwealth in which the beneficial interest

is held in shares assignable without consent of the other associates specifically authorizing such transfer, and a statement in detail of the works, structures, real estate, and machinery owned by each of said corporations, companies, copartnerships, and associations, and situated in such city or town, with the value thereof, on the first day of May preceding, and the amount at which the same is assessed in said city or town for the then current year. They shall also, at the same time, return to the tax commissioner the amount of taxes laid, or voted to be laid, within said city or town, for the then current year, for state, county, and town purposes.

SECT. 87. If the assessors of a city or town neglect to comply with the requirements of the preceding section, each assessor so neglecting shall forfeit one hundred dollars.

SECT. 88. When the assessors of any city or town ascertain that the aggregate values of such city or town have been diminished since the first day of May of the preceding year, they shall return with the table of aggregates, or with the books, which they are required by sections fifty-four and fifty-five to deposit in the office of the secretary of the commonwealth, a statement in writing, under oath, of the causes which in their opinion have produced such diminution.

SECT. 89. If the assessors of any city or town neglect to comply with the requirements of the preceding section, each assessor so neglecting shall forfeit a sum not exceeding two hundred dollars, which may be recovered in the supreme judicial court by information filed by the attorney-general.

SECT. 90. The assessors shall, on or before the first day of October in each year, make and forward to the tax commissioner a statement showing the whole amount of exempted property entered upon the valuation lists of their respective cities and towns in accordance with the provisions of section fifty-eight, and the amount in each class, and stating separately the aggregate amount belonging to each of the four classes embraced in the third division of section five. They shall also include in said statement a tabular statement of the statistics derived from the returns provided for in section nine.

[See Acts of 1882, ch. 217, sect. 3, as to returns to the tax commissioner by the assessors of all lists and statements received by them

Penalty for  
neglect.  
1865, 283, § 14.

Assessors to  
return to secre-  
tary sworn  
statement of  
cause of dimin-  
ished valuation  
of city or town.  
1864, 210, § 3.

Penalty for  
neglect.  
1864, 210, §§ 4, 6.

Assessors to  
send to tax  
commissioner  
statement of  
exempted prop-  
erty and of  
statistics con-  
cerning certain  
ships, etc.  
annually.  
1874, 227, § 2.  
1881, 234, § 4.

relating to property held for literary, benevolent, charitable or scientific purposes.]

**Assessors to return to tax commissioner amount of assets and indebtedness of towns, etc.**  
1870, 76.

SECT. 91. The assessors shall, on or before the first Monday of August, return to the tax commissioner the aggregate amount of the assets of their respective cities or towns, and the amount of indebtedness of such cities or towns, for which notes, bonds, or other similar evidences of debt, the payment of which is not provided for by the taxation of the then current year, were outstanding on the first day of May then next preceding, with a concise statement of the various purposes for which such indebtedness was incurred, and the amount incurred for each purpose.

[See Acts of 1882, ch. 133, as to additional returns as to sinking funds and certain municipal action under said chapter.]

**also statement of number, etc., of steam-boilers.**  
1873, 321, § 1.

SECT. 92. The assessors shall, in each year, on or before the first Monday in August, return to the tax commissioner a statement showing the whole number of steam-boilers located in their respective cities and towns on the first day of May then next preceding, by whom and when built, and the aggregate estimated amount of horse-power which such boilers are capable of furnishing. Such return shall also state the number of accidents causing permanent injuries to persons, which have arisen from the use of such boilers during the year, with the causes thereof, as far as may be ascertained by the assessors.

[In the city of Boston the returns under section 92 to be made by the inspector of buildings and not by the assessors. Stat. 1882, ch. 252, sect. 5.]

**to certify portions of tax assessed as state, county, and town taxes.**  
1879, 299, § 2.

SECT. 93. The assessors of any city or town shall, upon application to any one of them by any person assessed therein, give such person a certificate, which shall state what portion of the whole amount of such person's tax is assessed as state tax, county tax, and town tax, respectively; and in such case the collector shall receive and receipt for either of such taxes separately, or for all together, as may be desired by the tax-payer; and in such case also the state tax assessed upon poll and property, and the county tax assessed upon poll and property, shall each constitute an entire and indivisible tax. [Amended as follows: — “*Provided*, that the tax bills of male persons who are assessed for poll taxes only shall state the apportionment of such taxes between state and county assessments, and such persons shall not be entitled

to have the certificate provided for by this section, but the collector shall receipt on said bills for such taxes, separately, or together as the payment may be, and shall thereupon deliver such bills." See Stat. 1889, ch. 467.]

### *Responsibility and Compensation of Assessors.*

SECT. 94. The assessors shall not be responsible for the assessment of a tax in a city, town, parish, religious society, fire district or school district, for which they are assessors, when such tax is assessed by them in pursuance of a vote for that purpose, certified to them by the clerk or other proper officer of such city, town, parish, religious society, fire district, or school district, except for the want of integrity and fidelity on their own part.

99 Mass. 208.

119 Mass. 77.

125 Mass. 553.

Assessors to be responsible only for fidelity, etc.  
G. S. 11, § 51.  
1872, 310.  
4 Pick. 390.  
5 Pick. 451, 499.  
11 Met. 339.  
4 Gray, 42.  
3 Allen, 410.  
4 Allen, 382.  
97 Mass. 424.  
98 Mass. 469.

SECT. 95. Each assessor shall be paid by his city or town two dollars and fifty cents a day for every whole day that he is employed in that service, with such other compensation as the city or town shall allow.

Pay of assessors.  
G. S. 11, § 52.  
1873, 156.  
3 Met. 431.  
3 Allen, 469.  
4 Allen, 382.

### *Apportionment of State Tax.*

SECT. 96. The (deputy, 1890, 160) tax commissioner shall before the first day of January in the year eighteen hundred and eighty-three, and before the first day of January in every third year thereafter, prepare and report in print to the general court, within the first week of its then next succeeding session, an equalization and apportionment upon the several cities and towns, of the number of polls, the amount of property, and the proportion of every one thousand dollars of state or county tax, including polls at one tenth of a mill each, which should be assessed upon each city and town.

Tax commis-  
sioner to  
report on ap-  
portionment of  
the state tax  
once in three  
years.  
1881, 163, § 1.

SECT. 97. For the purpose of the preceding section the (deputy) tax commissioner shall be provided with suitable rooms in the state house, may employ such clerical assistance as shall be necessary, and may procure necessary stationery and other articles. He shall from time to time be furnished by the secretary of the commonwealth with the returns of assessors required by sections fifty-four and fifty-five. He shall cause to be prepared abstracts showing the value above real estate and machinery locally taxed of shares in Massachusetts corporations and national banks held by residents of each city and town and not included in the local assessment. He may require

to be fur-  
nished with  
room, clerks,  
etc., and with  
certain returns,  
etc., and to  
make his ap-  
portionment on the  
basis of same.  
1881, 163, §§ 1, 2.

from state, city, and town officers such further returns and statements relative to the amount and value of taxable property in the several cities and towns as in his judgment may be necessary. He shall to the best of his judgment and discretion prepare said equalization and apportionment upon the basis of the returns and statements herein provided for and authorized.

[By Stat. 1890, ch. 160, the office of deputy tax commissioner is abolished and his duties are required to be performed by the tax commissioner.]

## COLLECTION OF TAXES.

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[Acts of 1888, Chap. 890.]

**An Act to amend and codify the Statutes relating to the Collection of Taxes.**

*Be it enacted, etc., as follows:*

SECTION 1. Every collector of taxes, constable, sheriff, or deputy-sheriff, receiving a tax-list and warrant from the assessors, shall proceed to collect the taxes therein mentioned, according to the warrant.

SECT. 2. The collector shall, as soon as possible after receiving any tax-list and warrant, make out and distribute tax-bills to both residents and non-residents, showing the taxes assessed upon each tax-payer; but an omission to make or distribute tax-bills shall not invalidate a tax or proceedings for the collection or enforcement of the same. In cities, the tax-bills shall state the residence of each male tax-payer, giving the street and number if possible, and the tax-bills of persons assessed for a poll-tax only shall be distributed on or before the fifteenth day of September of the year in which the tax is assessed.

[By Stat. 1889, ch. 334, section 2 is repealed and the following is substituted therefor: —]

SECT. 2. The collector shall, as soon as possible after receiving any tax-list and warrant, send a notice to each person assessed, resident and non-resident, of the amount of his tax; and such notice, if sent through the mail, shall be postpaid and directed to the city or town which was the place of residence of such person on the first day of May of the year in which the tax was assessed, and if sent to a resident of the city in which the tax is assessed, shall be directed to the street and number of his residence, if possible. If the person is assessed for a poll-tax only, the notice shall be sent on or before the second day of September of the year in which the tax is assessed. An omission to send the notice herein required shall not invalidate a tax or proceedings for the collection or enforcement of the same.

Collectors to collect taxes.  
P. S. 12, § 1.  
126 Mass. 478.  
127 Mass. 505.

to distribute tax bills. Contents of same.  
P. S. 12, § 2.  
See ch. 11, § 74.

Collectors  
to keep  
proper books  
of account.  
1887, 110, § 1.

**SECT. 3.** Every collector of taxes shall enter in the book containing the tax-list, against the name of every person or corporation paying any money to such collector, the total amount received from such person or corporation, specifying in relation to such receipts the following particulars so far as the same may be applicable, viz : abatements allowed ; discount allowed ; interest charged ; total amount received ; time when received.

[Section 3 is amended by Stat. 1889, ch. 334, to read as follows : —]

Every collector shall make and keep, in the book committed to him by the assessors containing the tax-list, against the name of every person or corporation assessed for a tax, entries showing the disposition thereof, whether re-assessed, abated, or paid, and the date of such disposition.

cash book to  
show against  
name of every  
person, etc.,  
total amount  
paid, specifying  
certain particu-  
lars.  
1887, 110, § 2.

**SECT. 4.** Every collector of taxes shall also keep a cash book, in which he shall enter as they are received all sums paid to such collector, specifying in relation to such receipts the total amount of tax ; abatements allowed ; discount allowed ; interest charged ; total amount received ; and time when received. Said collector shall also keep a record of the date and amount of every payment and disbursement made by him, and to whom paid, together with such other matters as any city or town may require.

books to be  
open to exami-  
nation by  
authorized  
officers.  
1887, 110, § 3.

**SECT. 5.** All books kept by any collector of taxes by virtue of any provision of law shall be furnished at the expense and be the property of the city or town in which such collector holds office, and shall at all reasonable times be open to examination by the auditor or auditors of such city or town or any other officers or agents authorized by such city or town to make examination thereof.

Warrant, etc.,  
to be returned  
when ordered  
by assessors.  
1887, 110, § 4.

**SECT. 6.** Every collector of taxes shall make return of his warrant with his tax-list and of his doings thereon at such time or times as the assessors shall require the same, in writing.

Collectors to  
complete collec-  
tions, though  
term expire.  
P. S. 12, § 3.  
102 Mass. 75.  
119 Mass. 124.

**SECT. 7.** The collector shall, unless removed from office as hereinafter provided, or unless his tax list has been transferred to his successor as provided by law, complete the collection of taxes committed to him, although his term of office expires before such completion.

\* [This section is amended by Stat. 1889, ch. 334, sect. 3, to read as follows : —]

The collector shall, unless removed from office, as hereinafter provided, or unless his tax list has been transferred to his successor, as provided by law, complete the collec-

tion of taxes committed to him, although his term of office expires before such completion. He shall be allowed the following charges and fees, and no other, which shall be severally added to the amount of the tax after they have accrued, to wit:—

For a summons, twenty cents. [Stat. 1890, ch. 331.]

For arrest by collector or other officer, one dollar.

For a warrant to distrain or arrest, fifty cents.

For a copy of warrant and certificate (section fifteen), one dollar.

For preparing advertisement of sale, fifty cents.

For advertisement of sale in newspapers, the cost thereof.

For posting notices of sale (for each piece of real estate or lot of goods distrained), fifty cents.

For distraining goods, one dollar and the cost thereof.

For selling goods distrained, the cost thereof.

For obtaining affidavit of disinterested person, one dollar.

For recording affidavit, the register's fees.

For preparing deed, one dollar. [Two dollars, Stat. 1890, ch. 331.]

[Collectors who resign or are removed or retired from office to deposit accounts, records, and papers relating thereto with the city or town clerk. Stat. 1892, ch. 370.]

**SECT. 8.** Collectors shall, before distraining the goods of a person for his tax, demand payment thereof from such person, either personally or at his usual place of abode, if to be found within their precincts.

[This section is amended by Stat. 1889, ch. 334, to read as follows:—]

Collectors shall, before selling the real estate of a resident owner, or distraining the goods of any person assessed, or arresting him for his tax, make a demand for the payment thereof, either by causing to be given, or to be sent postpaid through the mail, directed as provided for the direction of notices in section two of this act, to the person assessed for a tax, or if the heirs of a deceased person, or a firm or more than one person are assessed, then to one of such heirs, or members of a firm, or owners only, a statement of the amount thereof, with a demand for its payment. Such demand for the tax on real estate shall be given, or be sent directed as hereinbefore provided, to the person or one of the persons as aforesaid, if

Demand to be  
made.  
P. S. 12, § 4.  
1 Met. 328.

a resident of the city or town, or to the person occupying the real estate on the first day of May of the year in which the tax is assessed ; if a mortgagee of real estate has given a notice as provided in section thirty-two, such demand shall be given, or be sent directed as hereinbefore provided, to the mortgagee instead of to the owner or occupant ; if a mortgagee or owner of real estate has given an authority to a resident attorney to pay the tax with notice thereof, as provided in section thirty-three, the demand shall be given, or be sent directed as hereinbefore provided, to such attorney instead of to a mortgagee, owner or occupant. No demand need be made of a non-resident owner of real estate, nor, except as herein provided, need any demand be made of a mortgagee or of an attorney.

[By Stat. 1892, ch. 168, sect. 1, any notice, summons, demand or other paper which the collector of taxes is by law required to serve, may be served by leaving the same at the last and usual place of abode, or of business, of the person assessed, or by sending the same through the mail, postpaid and directed to the person assessed, at the city or town in which such person was registered as a voter for the last preceding state election. The affidavit of a collector or deputy collector, kept on file in the office of the collector of taxes, that he has served such notice, summons, demand or other paper in the manner described in such affidavit, shall be *prima facie* evidence that it was so served.]

SECT. 9. When the assessors consider that the credit of a person taxed is doubtful, or believe that he is about to leave the state, they may, by a special warrant, direct the collector forthwith, without demand or notice, to compel payment by distress or imprisonment, whether the tax is made payable immediately, at a future day, by instalments, or otherwise.

SECT. 10. If a person claims the benefit of an abatement, he shall exhibit to the collector demanding his taxes a certificate of such abatement from the assessors or other proper officer, as provided in chapter eleven of the Public Statutes ; and shall be liable to pay all costs and officers' fees incurred before exhibiting such certificate.

SECT. 11. If, in the assessors' lists or in their warrant and list committed to the collector, there is an error in the name of a person taxed, the tax assessed to him may be collected of the person intended to be taxed, if he is taxable and can be identified by the assessors.

When credit  
doubtful, taxes  
may be collected  
forthwith.  
P. S. 12, § 5.  
129 Mass. 290.

Persons claim-  
ing abatement  
must produce  
certificate;  
liable to costs.  
P. S. 12, § 6.  
9 Met. 504.

Errors in names  
not to defeat  
collection.  
P. S. 12, § 7.  
6 Met. 474.  
7 Gray, 127.  
12 Cushing, 56.  
97 Mass. 323.  
127 Mass. 502.

## COLLECTION BY DISTRESS.

SECT. 12. If a person refuses or neglects for fourteen days after demand, to pay his tax, the collector shall, without unnecessary delay, levy the same by distress or seizure and sale of his goods, including any share or interest he may have as a stockholder in a corporation incorporated under authority of this Commonwealth, and excepting the following goods:—The tools or implements necessary for his trade or occupation; beasts of the plough necessary for the cultivation of his improved land; military arms; utensils for housekeeping necessary for upholding life; and bedding and apparel necessary for himself and family.

**Distress and  
sale, and prop-  
erty exempt  
from same.**  
P. S. 12, § 8.  
9 Met. 504.  
7 Gray, 133.  
121 Mass. 351.  
126 Mass. 101.  
129 Mass. 290.

SECT. 13. The collector shall keep the goods distrained, at the expense of the owner, for four days at least, and shall, within seven days after the seizure, sell the same by public auction, for payment of the tax and charges of keeping and sale, having given notice of the sale by posting up a notification thereof, in some public place in the city or town, forty-eight hours at least before the sale.

**Distress, how  
long kept, how  
advertised and  
sold.**  
P. S. 12, § 9.  
1 Met. 328.  
13 Met. 85.  
113 Mass. 40.  
127 Mass. 502.

SECT. 14. The collector may once adjourn such sale for a time not exceeding three days; he shall forthwith give notice of such adjournment by posting a notification at the place of sale.

**Sale may be  
once adjourned.**  
P. S. 12, § 10.

SECT. 15. The seizure of a share or other interest in a corporation may be made by leaving with any officer of the corporation, with whom a copy of a writ may by law be left when the share of a stockholder is attached on mesne process, an attested copy of the warrant, with a certificate thereon, under the hand of the collector, setting forth the tax which the stockholder is to pay, and that, upon his neglect or refusal to pay, the collector has seized such share or interest.

**Seizure of  
shares, how  
made.**  
P. S. 12, § 11.

SECT. 16. The sale of such share or interest shall be made in the manner prescribed by law for the sale of goods by collectors of taxes in like cases, and also subject to the provisions of sections forty-eight and forty-nine of chapter one hundred and seventy-one of the Public Statutes respecting sales on executions.

**Sale of shares  
seized, how  
made.**  
P. S. 12, § 12.  
4 Cushing, 10.  
11 Cushing, 338.

SECT. 17. If the distress or seizure is sold for more than the tax and charges of keeping and sale, the collector shall return the surplus to the owner, upon demand, with an account in writing of the sale and charges.

**Surplus to be  
returned to  
owner.**  
P. S. 12, § 13.  
5 Gray, 530.  
126 Mass. 101.

**BY IMPRISONMENT.**

**After fourteen days, party may be imprisoned.**  
 P. S. 12, § 14.  
 13 Met. 85.  
 9 Gray, 190.  
 13 Gray, 93.  
 3 Allen, 5.  
 129 Mass. 290.

SECT. 18. If a person refuses or neglects for fourteen days after demand to pay his tax, and the collector cannot find sufficient goods upon which it may be levied, he may take the body of such person and commit him to prison, there to remain until he pays the tax and charges of commitment and imprisonment, or is discharged by order of law. [These words are added to this section by Stat. 1893, ch. 241: But a person imprisoned for non-payment of a poll tax shall not be detained in prison more than twenty days.]

**Copy of warrant, etc., to be left with keeper of jail.**  
 P. S. 12, § 15.

SECT. 19. When the collector commits a person to prison, he shall give the keeper thereof an attested copy of the warrant, with a certificate thereon, under the hand of the collector, setting forth the sum which such person is to pay as his tax, with the cost of taking and committing him, and that upon his having neglected payment for fourteen days, or otherwise, as the case may be, and for want of goods whereof to make distress, he has taken his body.

[This section is amended by Stat. 1889, ch. 334, to read as follows:—]

When the collector commits a person to prison he shall give the keeper thereof a certificate signed by him, setting forth that he has committed the person for non-payment of his tax, for fourteen days after demand therefor, and for want of goods and chattels whereof to make distress, and also setting forth the amount said person is to pay for said tax and interest, and charges and fees.

**Persons imprisoned for non-payment of taxes, how discharged.**  
 P. S. 12, § 16.

SECT. 20. When a person committed to prison for the non-payment of taxes desires to take the oath for relief of poor debtors, he may represent the same to the jailer; and the jailer shall make the same known to some magistrate having authority to examine poor debtors; and the magistrate shall thereupon appoint a time and place for the examination of the debtor, and shall direct the jailer to cause the debtor to be present at the same. The notice required in such case to be given to the creditor may be given to either of the assessors or to the collector by whom the party was committed. And the assessors and collector, or any of them, may appear and do all things which a creditor might do in case of arrest on execution. And if the person so committed to prison for the non-payment of taxes is unable to pay the same, he shall be entitled to his discharge in like manner as persons committed on execution.

SECT. 21. If such person is discharged, the collector shall be liable to pay the tax with the charges of imprisonment, unless he arrested and committed the party within one year after the tax was committed to him to collect, or unless he is exonerated therefrom by the city or town to which the tax is due.

Collectors,  
when liable to  
pay, etc.  
P. S. 12, § 17.  
8 Met. 152.

SECT. 22. A collector, when resisted or impeded in the exercise of his office, may require any suitable person to aid him therein; and if such person refuses to render such aid, he shall forfeit a sum not exceeding ten dollars.

may demand  
aid. Penalty.  
P. S. 12, § 18.

SECT. 23. A collector may demand payment from a person assessed for a tax wherever such person is found; and in default of payment for fourteen days after demand the collector may forthwith proceed to collect the tax by making a distress, or by commitment of such person to the prison of the county where he is found; or the collector may issue his warrant to the sheriff of any county or his deputy, or to any constable, directing them to distrain the property or take the body of such person, and to proceed therein in like manner as required of collectors in like cases. The warrant shall run throughout the state, and any officer to whom it is directed may serve it and apprehend the person in any county.

may demand  
payment wher-  
ever person is  
found and make  
distress or  
commit.  
P. S. 12, § 19.

[This section is amended by Stat. 1889, ch. 334, to read as follows:—]

When a tax assessed upon a person remains unpaid for fourteen days after demand therefor, the collector may issue his warrant to the sheriffs of the several counties, or their deputies, or to any constable of, or deputy collector of taxes for, the city or town for which he is the collector, directing them and each of them to distrain the property or take the body of the person assessed for the tax, and to proceed therein in like manner as required of collectors in like cases. The warrant shall run throughout the state, and any officer to whom it is directed may serve it, and apprehend the person in any county.

#### BY SUIT OR DISTRESS.

SECT. 24. When a person assessed for a tax, either on real or personal estate, or both, dies or neglects to pay the tax for three months after it is committed to the collector, or, being an unmarried woman, marries before payment of the tax, the collector may, in his own name, maintain an action of contract, or trustee process therefor, in like manner as for his own debt.

Remedy if per-  
sons die or  
neglect to pay  
tax for three  
months, etc.  
P. S. 12, § 20.  
6 Mass. 44.  
23 Pick. 236.  
8 Met. 393.  
137 Mass. 444.

[This section is amended by Stat. 1889, ch. 334, to read as follows:—]

When a tax assessed, or re-assessed, upon a person either for real or personal estate, or both, remains unpaid

for three months after it is committed to the collector, the collector may, in his own name, sue or otherwise proceed in court against the person assessed, to collect the tax, in like manner as to collect a debt due him from such person.

**Against  
executors,  
administrators  
and assignees.**  
P. S. 12, § 21.  
97 Mass. 321.  
121 Mass. 222.

**Collection of tax  
upon personal  
property, held  
as an accumulat-  
ing fund for  
future benefit of  
heirs, etc.**  
P. S. 12, § 22.  
123 Mass. 355.  
124 Mass. 193,  
196.

**Remedy against  
persons who are  
not owners of  
the real estate  
taxed to them.**  
P. S. 12, § 23.

SECT. 25. When a person assessed for a tax dies or becomes insolvent before the payment thereof, or when a tax is assessed upon the estate of a deceased person, the executor or administrator or assignee shall, if a demand has been made upon him therefor, forthwith upon his acquiring any moneys applicable to the payment of the tax, pay the same, and in default shall be liable personally therefor, as for a tax assessed upon him.

SECT. 26. Whenever personal property placed in the hands of a corporation or an individual as an accumulating fund for the future benefit of heirs or other persons has been duly assessed to such heirs or persons according to the provisions of clause six, section twenty, of chapter eleven of the Public Statutes, and the persons so taxed neglect to pay the tax for one year after it has been committed to the collector, the collector may, in his own name, maintain an action of contract therefor against said trustee, in like manner as for his own debt; and the amount thereof paid by said trustee may be allowed in his account as such trustee.

SECT. 27. When a person is taxed for real estate in his occupation, but of which he is not the owner, the collector, after demand of payment, may levy the tax by distress and sale of the cattle, sheep, horses, swine, or other stock or produce of such estate, belonging to the owner thereof, which within nine months after such assessment is committed to him shall be found upon the premises, in the same manner as if such stock or produce were the property of the person so taxed; but such demand need not be made if the person on whom the tax is assessed resided within the precinct of the collector at the time of the assessment, and subsequently removes therefrom and remains absent three months.

**Collector may  
issue summons  
in certain cases.**

SECT. 28. When a tax is due from any person, the collector may, before making a demand for the payment thereof, as required by law, mail postpaid or cause to be delivered a summons to such person, stating therein the amount due and that unless the same is paid within ten days with twenty cents for the summons, the collector will then proceed to collect the same according to law.

[This section is repealed by Stat. 1889, ch. 334, and is substantially re-enacted by Stat. 1890, ch. 331.]

SECT. 29. The following charges and fees and no other shall be allowed to the collector, and shall be added to the amount of the tax upon a restraint of goods, or arrest and commitment:—

Charges and fees allowed collectors for restraint of goods, etc.

For a summons, twenty cents.

For making a written demand, twenty cents.

For advertisement of sale, fifty cents.

For posting notices of sale in one or more public places, twenty cents.

For a warrant to sheriff or constable, fifty cents.

For copy of warrant under section fifteen and certificate thereon, one dollar.

For removing goods distrained and keeping the same, the actual and reasonable cost thereof.

For an arrest on assessor's warrant, and commitment to prison, the fees allowed by law to sheriffs for like services.

[This section is repealed and new section substituted, see Stat. 1889, ch. 334, sect. 3.]

#### BY SALE OR TAKING OF REAL ESTATE.

SECT. 30. Taxes assessed on real estate, including taxes assessed under sections fourteen, fifteen and sixteen of chapter eleven of the Public Statutes, shall constitute a lien thereon from the first day of May until the expiration of two years from the first day of October of the year in which said taxes are assessed; and may with all incidental costs and expenses be levied by sale thereof, if the tax is not paid within fourteen days after a demand of payment made either upon the person taxed or upon any person occupying the estate; when taxes on real estate are assessed to the heirs of a deceased person or to more than one owner, a demand made upon one of said heirs or owners shall be sufficient, but the collector may sell real estate for taxes after the two years have elapsed, unless the estate has been alienated prior to the giving of the notice of such sale.

Taxes to be lien on real estate, etc.  
P. S. 12, § 24.  
7 Pick. 15.  
2 Gray, 185.  
99 Mass. 31.  
106 Mass. 29.  
119 Mass. 295.  
120 Mass. 299.  
124 Mass. 343.  
136 Mass. 185.  
137 Mass. 448.  
143 Mass. 59.

[This section is amended by Stat. 1889, ch. 334, to read as follows:—]

Taxes assessed on real estate, including taxes assessed under sections fourteen, fifteen and sixteen of chapter eleven of the Public Statutes, shall constitute a lien thereon from the first day of May until the expiration of two years from the first day of October of the year in which said taxes are assessed. If such tax remains unpaid for fourteen days after demand therefor, it may with all incidental charges and fees be levied by sale of the real estate within said two years, or after the expiration of said two years, if the estate has not been alienated prior to the giving of the notice of such sale.

SECT. 31. Taxes re-assessed on real estate shall constitute a lien thereon for the time specified in the preceding section, unless the estate has been alienated between the first and second assessments; and may be levied as provided in the preceding section.

Taxes re-assessed to be a lien, unless, etc.  
P. S. 12, § 25.  
99 Mass. 32.  
129 Mass. 379.

**Resident mortgagee of real estate, when to be called upon for taxes, etc.**  
P. S. 12, § 26.

**SECT. 32.** If a mortgagee of real estate, situated in the place of his residence, previously to the assessment of a tax, gives written notice to the clerk of such place that he holds a mortgage thereon, with a description of the estate, the collector before proceeding to sell it for non-payment of taxes shall demand payment of said taxes of the mortgagee, as provided in section thirty.

[This section is amended by Stat. 1889, ch. 334, to read as follows: —]

If a mortgagee of real estate, situated in the place of his residence, previously to the first day of September of the year in which the tax is assessed, gives written notice to the collector of such place that he holds a mortgage on real estate with a description of the estate, the demand of payment for the tax shall be made of the mortgagee instead of the owner.

**When mortgagee or non-resident owner appoints attorney, demand how made.**  
P. S. 12, § 27.

**SECT. 33.** If a mortgagee or non-resident owner of real estate previously to the assessment of a tax, gives a written authority to some inhabitant of the place as his attorney, to pay the taxes imposed on such estate, and the authority is filed with, or recorded by, the clerk of the place, the demand of payment shall be made upon such attorney before the estate is sold; otherwise, no demand need be made of payment of taxes assessed on the real estate of non-resident owners.

[This section is amended by Stat. 1889, ch. 334, to read as follows: —]

If a mortgagee or owner of real estate gives a written authority to some inhabitant of the place, as his attorney, to pay the taxes imposed on such estate, and likewise gives to the collector previously to the first day of September of the year in which a tax is assessed, written notice that such authority has been given, the demand of payment for the tax shall be made of such attorney, instead of the owner, and instead of the mortgagee, as provided in section thirty-two.

**When so made, collector to wait two months.**  
P. S. 12, § 28.

**SECT. 34.** When a demand is made upon the attorney under the preceding section, the collector shall not advertise the sale of the lands until two months from the time of such demand.

**Sales of real estate, how advertised.**  
P. S. 12, § 30.  
13 Gray, 77.  
124 Mass. 66.  
126 Mass. 280.

**SECT. 35.** The collector shall give notice of the time and place of sale of real estate for payment of taxes, by an advertisement thereof three weeks successively in some newspaper published in the city or town where the premises to be sold for taxes are situated, if there is such newspaper, and, if not, then in a newspaper printed in the county where the real estate lies; the last publication to be at least one week before the time of sale.

SECT. 36. The advertisement shall contain a substantially accurate description of the several rights, lots, or divisions of the estate to be sold, the amount of the tax assessed on each, the names of all owners known to the collector, and the taxes assessed on their respective lands.

Contents of  
advertisement.  
P. S. 12, § 31.  
4 CUSH. 285.  
7 CUSH. 503.  
124 MASS. 86.

SECT. 37. The collector shall, three weeks before the sale, post a notice similar to that required by the two preceding sections in some convenient and public place in his precinct, and a like notice on the premises by him advertised to be sold, if any part thereof is bounded by a street, lane, court, or highway.

Notices, how  
posted.  
P. S. 12, § 32.  
126 MASS. 280.

[This section is amended by Stat. 1889, ch. 394, as follows: —]

The collector shall, three weeks before the sale, post a notice, similar to that required by the two preceding sections, on the premises by him advertised to be sold, if any part thereof is bounded by a street, lane, court or highway.

SECT. 38. When real estate to be sold under the provisions of this act is situated in a place the name of which has been changed by law within three years next preceding the sale, the collector shall in his advertisement and notices of the sale designate such place by its former and present name.

When name of  
place has been  
changed.  
P. S. 12, § 33.

SECT. 39. The affidavit of a disinterested person, or any deputy collector, or of the collector who makes the sale of land for the payment of taxes, stating the demand of the payment of the tax, the person of whom and the time and manner in which it was made, and a like affidavit of the posting and publishing of notifications of the sale, with a copy of the original advertisement thereto annexed, and filed and recorded within three months after the date of sale in the registry of deeds of the county or district where the land lies, shall be competent evidence of said demand and of the notification.

Affidavit of de-  
mand, posting  
and publishing  
to be evidence if  
recorded.  
P. S. 12, § 34.

SECT. 40. If the taxes are not paid the collector shall, at the time and place appointed for the sale, sell by public auction so much of the real estate, or the rents and profits of the whole estate for such term of time, as shall be sufficient to discharge the taxes and necessary intervening charges; or he may at his option sell the whole or any part of the land; and after satisfying the taxes and charges, he shall deposit the balance, if any, in the treasury of the city or town; and such city or town shall pay such balance to the owner of the estate upon demand. The collector may, in his discretion at such sale, require an immediate deposit by the purchaser of

Sale by auction  
for non-pay-  
ment of taxes.  
P. S. 12, § 35.  
13 Gray, 77.  
3 Allen, 535.  
124 MASS. 65.  
126 MASS. 280.  
127 MASS. 39.  
1884, 162, § 1.

Collector may  
require a  
deposit, etc.

such sum as he shall deem necessary to insure good faith, in part payment of the purchase money, which deposit shall not exceed the amount of the tax and the costs and charges thereon ; and if he fails to make such deposit forthwith, the sale shall be void and the estate shall, then and there, be again offered for sale.

*Charges and fees allowed to collectors.*  
P. S. 12, § 36.

SECT. 41. The following charges and fees, and no other, shall be allowed to the collector, and shall be added to the amount of the tax, as provided in the preceding section : —

For making a written demand, twenty cents.  
For preparing advertisement, fifty cents.  
For advertisement in newspaper, the actual cost of the same.  
For posting up notices in one or more public places, twenty cents.  
For posting up notices on each piece of real estate, twenty cents.  
For copy of notice, and the publication thereof, and obtaining affidavit of disinterested person, fifty cents.  
For recording affidavit at registry of deeds, the fees of the register  
For preparing deed, two dollars.  
And in the event that any delinquent tax-payer offers to pay the tax before the day of sale or taking, such charges shall be added to the tax as have intervened at the time of said offer to pay.

[This section repealed by Stat. 1889, ch. 334, sect. 3, and new provisions substituted.]

*Collector may adjourn sale from time to time, etc.*  
P. S. 12, § 37.  
112 Mass. 535.

*Deed to be given to purchaser; contents thereof and when to be recorded.*  
P. S. 12, § 38.  
2 Gray, 185.  
6 Allen, 576.  
118 Mass. 540.  
126 Mass. 278.  
127 Mass. 39.  
136 Mass. 32.

SECT. 42. The collector may adjourn his sale from time to time not exceeding seven days in the whole ; and he shall give notice of every such adjournment by a public declaration thereof at the time and place previously appointed for the sale.

SECT. 43. The collector shall execute and deliver to the purchaser a deed of the real estate or rents and profits sold ; which deed shall state the cause of sale, the price for which the estate or rents and profits were sold, the name of the person on whom the demand for the tax was made, the places in the city or town where the notices were posted, the newspaper in which the advertisement of the sale was published, and the place of residence of the grantee, and a warranty that the sale has in all particulars been conducted according to the provisions of law ; and, if the real estate has been sold, shall convey, subject to the right of redemption provided for in section fifty-seven, all the right and interest which the owner had therein at the time when the same was taken for his taxes. Such deed, to be valid, shall be recorded within thirty days from the day of sale.

*Town, etc., to refund in case of error, etc.: provided, pur-*

SECT. 44. If it should subsequently appear that by reason of any error, omission or informality in any of the

proceedings of assessment or sale, the purchaser has no claim upon the property sold, there shall be paid to said purchaser, by the city or town whose collector executed said deed, upon his surrender and discharge of the deed so given, the amount paid by such purchaser, together with interest on the same at the rate of ten per cent. per annum, which payment shall be in full satisfaction of all claims for damages for any defects in the proceedings: *provided*, the said purchaser, within two years from the date of such deed, offers in writing to surrender and discharge the same, or to assign and transfer to the city or town all his right, title and interest therein as the collector thereof shall elect.

chaser shall offer to sur-  
render, etc.,  
within two  
years.  
P. S. 12, § 39.  
131 Mass. 277.  
10 Allen, 49.

SECT. 45. Every person acquiring or holding title to real estate under a sale for the non-payment of any tax or other assessment, who is a resident of the city or town wherein such real estate is situated, shall file with the treasurer of the city or town, and with the register of deeds of the county wherein such real estate is situated, a brief statement showing his place of residence and of business, specifying in each case, if practicable, the street and the number in the street. Every person acquiring or holding title to real estate as above who is not a resident of the city or town wherein such real estate is situated, or who removes from such city or town, shall appoint and have some suitable agent or attorney residing therein or in the city or town wherein the deed of such real estate is recorded, duly authorized to release such real estate in accordance with the provisions of law providing for such cases, and shall file with the treasurer of such city or town and with such register of deeds such original and additional statements containing the name of any such agent or attorney and his place of residence and of business, as is herein required in the case of resident purchasers or holders; and whenever such person changes his place of residence or business, or his attorney, a new certificate as above shall be filed.

Holder of title if  
a resident to file  
with treasurer,  
etc., a statement  
showing his resi-  
dence and place  
of business.  
1882, 243, § 1.

SECT. 46. Any lawful tender of payment to and service of process upon such agent or attorney shall be deemed sufficient tender to or service upon the purchaser or holder of such real estate; and if upon reasonable search such purchaser, holder, agent or attorney cannot be found at the place described as hereinbefore provided, or being found neglects or refuses to release such estate

Non-resident  
holders to have  
a resident agent  
or attorney  
authorized to  
execute a  
release.

Service of  
process upon  
agent deemed  
to be sufficient  
service upon  
holder.  
1882, 242, § 2.

upon the terms and in the manner provided by law, or if such holder or purchaser neglects to file a certificate as required by the preceding section, such real estate may be redeemed in the manner provided in sections fifty-eight and fifty-nine.

**Liability of city,  
town, etc.,  
1882, 243, § 3.**

SECT. 47. No city or town and no collector or treasurer of a city or town shall, under the provisions of section forty-four, pay or be liable for the amount due upon any deed therein referred to or for any part thereof unless the offer of the holder of such deed contains a specific statement of the reason why such holder has no claim on the estate sold, with the evidence on which he relies; and if such evidence is based upon any public record or upon facts shown in any such record, the statement above required shall contain a specific reference to the particular instrument relied upon.

**Collector shall  
purchase for  
city or town if no  
other sufficient  
bid is made  
after one or  
more adjourn-  
ments.**  
P. S. 12, § 40.  
112 Mass. 635.  
137 Mass. 444.

SECT. 48. If at the time and place of sale no person appears and bids for the estate, or for the rents and profits thereof, or for the whole or any part of the land, an amount equal to the tax and charges, and if the sale has been adjourned one or more times, as provided in section forty-two, a public declaration of the fact shall then and there be made by the collector; immediately after which, if no bid equal to the tax and charges is then made, the collector shall give public notice that he shall, and that he then and there does, purchase, on behalf of the city or town by which the tax is assessed, the said estate in one of the forms set forth in section forty; but no sum exceeding the amount of the tax and the incidental costs and expenses of levy and sale shall be offered by him therefor; and the same shall be allowed him in his settlement with such city or town.

**When purchas-  
ers at tax sales  
fail to pay and  
receive deed  
within ten days,  
sale to be void,  
and town, etc.,  
deemed  
purchaser.**  
P. S. 12, § 41.  
126 Mass. 278.

SECT. 49. If after the sale of real estate for the payment of taxes a purchaser thereof fails to pay the collector within ten days the full sum offered by him and to receive his deed, the sale shall be null and void, and the city or town shall be deemed to be the purchaser of the estate, according to the provisions of the preceding section.

[This section is amended by Stat. 1889, ch. 334, to read as follows : —]

If after the sale of real estate for the payment of taxes a purchaser thereof fails to pay the collector within twenty days the full sum offered by him and to receive his deed, the sale shall be null and void, and the city or town shall be deemed to be the purchaser of the estate, according to the provisions of the preceding section.

SECT. 50. When the city or town becomes the purchaser, the deed to be given by the collector shall, in addition to the statements required by section forty-three, set forth the fact of the non-appearance of a purchaser at the sale advertised by him, or of the preceding sale and the failure of a purchaser to pay the sum offered, as the case may be, and shall confer upon such city or town the same rights as belong to an individual to whom such a deed may be given.

Form of deed  
in case city or  
town is pur-  
chaser, and  
rights of same  
thereunder.  
P. S. 12, § 42.  
6 Allen, 576.

SECT. 51. Deeds to a city or town shall be placed in the custody of its treasurer, to whom all applications for the redemption of the estate so sold shall be made. And the several cities and towns may, as holders of such deeds, exercise the same rights and perform the same duties as any individual purchaser of real estate taken for taxes, and may make regulations for the custody, management and sale of such estates, and for the assignment of the tax titles thus obtained, not inconsistent with law or with the right to redeem the same.

Such deeds to  
be in custody  
of treasurers.  
Regulations for  
sale, etc., of  
estates so con-  
veyed, may be  
made by towns,  
etc.  
P. S. 12, § 43.

[This section is amended by Stat. 1889, ch. 334, to read as follows: —]

Deeds to a city shall be placed in the custody of its collector, and to a town shall be placed in the custody of its treasurer, and to said collector or treasurer all applications for the redemption of the estates described in said deeds shall be made. And the several cities and towns may, as holders of such estates, exercise the same rights and perform the same duties as any individual purchaser of real estate taken for taxes, and may make regulations for the custody, management and sale of such estates, and for the assignment of the tax titles thus obtained, not inconsistent with law or with the right to redeem the same.

SECT. 52. In addition to the power to enforce the lien for a tax or assessment on real estate, including taxes assessed under sections fourteen, fifteen and sixteen of chapter eleven of the Public Statutes, with all incidental costs and expenses by sale thereof, the collector shall have power to take for the city or town the whole of the real estate taxed or assessed, if the tax or assessment is not paid within fourteen days after a demand of payment made as required by sections thirty, thirty-two and thirty-three, and remains unpaid at the date of such taking. The collector shall give three weeks' notice of his intention to exercise such power of taking; which notice may be served either in the manner prescribed by law for the service of summonses for witnesses in civil cases, or by advertisement thereof in the manner required by section

Collector may  
also enforce tax  
by taxing whole  
of real estate;  
to give notice of  
intention to  
exercise such  
power.  
P. S. 12, § 44.

thirty-five, and shall contain the particulars required by section thirty-six. He may also post a similar notice in accordance with the provisions of section thirty-seven.

Evidence of  
notice.  
P. S. 12, § 45.

SECT. 53. The affidavit of the collector, deputy collector, or of a disinterested person, taken before a justice of the peace, of the service of the demand of payment, and of the notice, as provided in the preceding section, with copies thereof annexed, filed and recorded in the registry of deeds of the county or district where the land lies, shall be competent evidence of such demand and notice. [Amended by Stat. 1892, ch. 109.]

Instrument of  
taking, what to  
contain, etc.;  
where recorded.  
P. S. 12, § 46.

SECT. 54. Said affidavits shall be annexed to the instrument of taking, which shall be under the hand and seal of the collector, and shall contain a statement of the cause of taking, a substantially accurate description of each parcel of land taken, the name of the person to whom the same was assessed, and the amount of the tax thereon and of the incidental costs and expenses to the date of taking, and shall be filed and recorded in the registry of deeds of the county or district where the land lies; and the title to the lands so taken shall thereupon vest in the city or town, subject to the right of redemption given by section fifty-seven. [Amended by Stat. 1892, ch. 109.]

Fees in such  
case.  
P. S. 12, § 47.

SECT. 55. Whenever the collector exercises the power of taking above provided, there shall be allowed to him, and added to the amount of the tax, the same charges and fees as are fixed for similar proceedings by section forty-one; and when service of the demand of payment and notice of intention to take is made in the manner prescribed by law for the service of summonses for witnesses in civil cases, there shall be allowed therefor, and added as above mentioned, fifty cents, together with the fees of officers for travel fixed by chapter one hundred and ninety-nine of the Public Statutes.

Sale or taking  
deemed to be in  
name of owner  
if the name of  
one owner ap-  
pears. Undivided  
interest  
not to be sold  
or taken.  
P. S. 12, § 48.

SECT. 56. Every sale or taking of real estate for payment of taxes shall be deemed to be in the name of the owner or owners thereof, if the proceedings of assessment, sale or taking are made in the name of one more of the persons who appear as record owners of such estate at the date of assessment; but any taking of real estate for payment of taxes shall be of the whole estate, and no sale or taking shall be of the undivided interest of any one or more of the joint owners thereof.

SECT. 57. The owner of real estate taken or sold for payment of taxes, including those assessed under sections fourteen, fifteen and sixteen of chapter eleven of the Public Statutes, or his heirs or assigns, may within two years from the day of taking or sale redeem the estates taken or sold by paying or tendering to the collector, when he exercises the power of taking, the amount of the tax for which said property was taken, with the charges and fees allowed to him, and all intervening taxes; or to the purchaser, his heirs or assigns, the original sum and intervening taxes paid by him; and in each case with ten per cent. interest, the cost of recording the tax deed or evidence of taking, and a sum not exceeding three dollars for examination of title, a deed of conveyance or release, and for all other necessary intervening charges; and when the rents and profits are sold for payment of taxes, the same may be redeemed at any time within two years in the manner provided for the redemption of rents and profits taken on execution. And in the following cases real estate so taken or sold may be redeemed, by any person having such title thereto that he might have recovered the same if no such taking or sale had been made, at any time within two years after he has actual notice of the sale: —

First, when no person is named in the tax-list as the owner or occupant of the premises, they being taxed as belonging to persons unknown.

Second, When the person who is named in said list is merely a tenant or occupant of the premises, and not the rightful owner thereof.

Third, When there is any substantial and misleading error in the name of the person intended to be taxed.

Fourth, When the person offering to redeem is a mortgagee of record.

But no person shall have a right to redeem land held by a city or town under a sale or taking for payment of a tax or assessment, unless he pays or tenders to the collector thereof all sums due the city or town in respect of said land by reason of all such sales or takings thereof, and of all subsequent taxes or assessments thereon due and unpaid, with all interest and incidental cost and expenses.

[By Stat. 1891, ch. 288, whoever knowingly collects or attempts to collect for the redemption of an estate sold for payment of taxes a sum of money greater than that

Owner may  
redeem within  
two years.  
Terms of  
redemption.  
P. S. 12, § 49.  
98 Mass. 44.  
126 Mass. 278,  
335.  
130 Mass. 125.  
143 Mass. 59.

authorized in section fifty-seven of chapter three hundred and ninety of the acts of the year eighteen hundred and eighty-eight shall be punished by fine not exceeding one hundred dollars.]

*Lands, how  
redeemed when  
purchaser can-  
not be found.  
P. S. 12, § 50.*

SECT. 58. If upon reasonable search the purchaser of real estate sold for payment of taxes, or an agent or attorney duly appointed by the purchaser as hereinafter provided, cannot be found, the owner of the estate may redeem it as provided in the preceding section, on paying to the treasurer of the place in which it is situated the amount which he would be required to pay to the purchaser; and the affidavit of any disinterested person of the making such search, filed in the registry of deeds for the district or county in which the land is situated, within ninety days from the completion of the search, shall be competent evidence of the facts therein stated.

*Duty of treas-  
urer in such  
case.  
P. S. 12, § 51.*

SECT. 59. Such treasurer shall receive the money and give to the person paying it a certificate of such payment, specifying the estate on which the tax was originally assessed. The certificate may be recorded in the registry of deeds, with a note of reference from such record to the collector's deed; and when so recorded, shall have the effect to release and discharge all right and title acquired under the collector's deed. The treasurer shall hold all money so received by him for the use and benefit of the persons entitled thereto, and shall pay it over on reasonable demand.

*Mortgagee may  
pay taxes on  
real estate in  
certain cases.  
P. S. 12, § 52.  
129 Mass. 291.*

SECT. 60. After proceedings have been commenced for the taking or sale of real estate for a tax assessed thereon, and before the taking or sale is made, the holder of any mortgage thereon may pay such tax with all intervening charges and expenses; and when the owner of real estate has neglected, for three months after demand, to pay such a tax, and the collector has made demand therefor upon a holder of a mortgage thereon, such holder may in like manner pay such tax, charges and expenses.

*shall pay such  
taxes on taking  
possession; en-  
titled to deed  
on tender.  
P. S. 12, § 53.  
5 Allen, 65.  
137 Mass. 448.*

SECT. 61. The holder of a mortgage, upon taking possession of real estate thereunder, shall be liable to pay all taxes due thereon, and the expenses of any taking or sale for taxes that has been commenced or has taken place, to be recovered of him in an action of contract by the collector, or, when a sale has taken place by the purchaser; and upon payment or tender by the mortgagee

to the collector or the purchaser of the same sums and within the same time as provided in section fifty-seven for owners of real estate to make tender, the city or town or such purchaser shall execute and deliver to him a valid deed of assignment of all interest acquired by virtue of the taking or sale.

SECT. 62. For all sums paid to a collector by the holder of a mortgage under either of the two preceding sections, the collector shall upon demand give him a receipt therefor, duly acknowledged; and such sums shall be added to and constitute part of the principal sum of the mortgage; and the mortgage shall not be redeemed without the consent in writing of the holder, until such sums and interest thereon are paid; and such receipt recorded within thirty days from its date, in the registry of deeds for the county or district where the land lies, shall be notice to all persons of the payment of such sums, and of the lien upon the estate therefor.

SECT. 63. If any part of a tax duly assessed upon real estate under the provisions of sections fourteen, fifteen and sixteen of chapter eleven of the Public Statutes remains unpaid on the first day of January next after the same has been assessed, either party may pay the same; and, if it is paid by a mortgagee, he may take from the collector such a certificate as is mentioned in section fifty-nine, to be recorded as therein provided, with a note of reference from such record to the mortgage deed; and such sums so paid for taxes other than those assessed to himself, with costs and interest, shall be added to and constitute a part of the principal sum of his mortgage; and the recording of such certificate within thirty days from its date shall be notice to all persons of the payment of such sums, and of the lien therefor upon the estate. When taxes so assessed to a mortgagee have been paid by the mortgagor or by a person claiming under him, either to the collector or to a mortgagee who has paid the same as provided in this section, the person so paying may deduct the sum so paid, with the costs and interest thereon, from the amount due to the mortgagee to whom said taxes were assessed, unless the parties have otherwise agreed in writing. A person whose tax is so paid by another shall have the same right to recover it from the city or town, if illegally assessed, which he would have had if the tax had been paid under a protest by him in writing.

entitled to receipt for sums paid collector; may tack same to mortgage.  
P. S. 12, § 54.  
129 Mass. 291.  
130 Mass. 126.

Mortgage taxes unpaid may be paid by any person interested. Proceedings upon such payment.  
P. S. 12, § 55.

**Taxes to be assessed on estates purchased or taken by towns, etc., and deducted from proceeds of final sale.**  
P. S. 12, § 56.

**Land held by city or town under sale may be redeemed by owner of any interest therein. If by mortgagee, amount paid to be tacked to mortgage.**  
P. S. 12, § 57.

**Proceedings when property held by city or town under a sale or taking for taxes is not redeemed. Sale of same, and disposition of proceeds.**  
P. S. 12, § 58.  
1883, 101.  
1886, 320, § 1.  
134 Mass. 82.

**Collector may sell without vote of town.**

**Minimum price to be stated in notice of sale.**

**SECT. 64.** If an estate is purchased or taken by a city or town, according to the provisions of this act, taxes shall be assessed upon the same in the same manner as though the same were not so purchased or taken; and said taxes shall be deducted from the proceeds of the final sale, as provided in section sixty-six.

**SECT. 65.** The owner of any interest in real estate purchased and held by a city or town for payment of taxes may, if he has a right to redeem the same, pay to the treasurer of the city or town all sums required by law for the redemption of such estate; in which case the treasurer shall give to him a like certificate as that mentioned in section fifty-nine, and the certificate may be recorded in the manner, and with like effect, as that described in said section. If the person so redeeming be the holder of a mortgage, the sum so paid by him shall be added to, and constitute a part of, the principal sum of the mortgage; and the mortgage shall not be redeemed until such sums, and interest thereon, are paid; and, in such case, the recording of said certificate in the registry of deeds in the district or county where the land lies, within thirty days from its date, shall be notice to all persons of the payment of such sums and of the lien upon the estate therefor.

**SECT. 66.** If no person lawfully entitled redeems, within the time prescribed by law, real estate purchased or taken for and held by a city or town under the provisions of this act, or of any statute repealed by this act, its collector of taxes for the time being, without any vote or other authority being required therefor, shall, within two years thereafter, proceed to sell the same by public auction, after having given the notice required in section thirty-five; and if, from any cause, such sale shall not be made within two years, as aforesaid, it shall be made by the collector at such time as he deems best or at once upon the service upon him of a written demand of any person interested therein. The collector shall state in his notice of sale the amount for not less than which the sale will be made, and shall, for the city or town, execute and deliver to the highest bidder therefor a quit-claim deed. From the money arising from said sale shall be deducted the expenses of making the sale, together with the amount named in the collector's deed or instrument of taking as the sum due when the same was

executed, and all interest and charges thereon fixed by law, and also all subsequent taxes and assessments, with all interest and charges due in respect thereof; and the balance, if any, shall be deposited in the city or town treasury, and shall be paid to the party legally entitled to the estate if it had not been sold for taxes, if such balance is called for within five years; and if not demanded within that time, the same shall inure to the benefit of said city or town.

SECT. 67. If no person bids at such sale for said real estate said amount or more, or if the person so bidding and to whom the estate is sold fails to pay to the collector within ten days the full sum offered by him for the estate, the collector shall make an affidavit before a justice of the peace of the non-appearance of a purchaser or the failure of such bidder to pay the sum offered, and the same shall be recorded in the registry of deeds in the county or district where the land lies, within thirty days of the date at which the same was offered for sale; such affidavit, or a copy thereof duly certified by the register of deeds, shall be *prima facie* evidence of the facts therein stated.

SECT. 68. After the recording of said affidavit, the collector, for and in behalf of the city or town, shall, within thirty days thereafter, take possession of said real estate, and the city or town may make such regulations for the custody, management and sale thereof as it deems best, and taxes shall be assessed thereon in the name of such city or town until such land shall be sold; the said affidavit shall be placed in the custody of its treasurer, and such subsequent sale and the money received therefrom shall be had and held as provided in section sixty-six.

To make and record affidavit in registry of deeds if estate is not sold, etc.  
1888, 320, § 2.

To take possession in behalf of town.  
1888, 320, § 3.

#### PROCEEDINGS WHEN TAX TITLE IS DEEMED INVALID.

SECT. 69. When a collector of taxes has reasonable cause to believe that the title created by a deed given in consequence of a sale for payment of taxes, or of an assessment, a lien for which is enforceable by sale of real estate, is invalid by reason of an error, omission or informality, in the assessment or sale, he may, [with the approval of the assessors, (these words repealed, Stat. 1889, ch. 334)], within two years from the date of said deed, give notice to the person appearing of record as owner of

When collector has reason to believe that title under sale for taxes is invalid, etc.  
P. S. 12, § 69.

the real estate, requiring him within thirty days to surrender and discharge the deed so given, and to receive from the city or town the sum due therefor, with interest as provided by law, or to file with the collector a written statement that he refuses to make such surrender or discharge; and such statement shall be deemed an absolute release of the city or town from any liability whatever upon the warranty contained in said deed.

Service of notice to holder of such title.  
P. S. 12, § 60.

SECT. 70. The notice required by the preceding section shall be served in the manner prescribed by law for the service of summonses for witnesses in civil cases; but in case the holder has no place of abode in the city or town, or cannot be there found, it shall be served by mail or by publication one week in some newspaper published in the county wherein the city or town lies; or, if there be none such, in some newspaper published in an adjacent county. If the holder fails to comply with such notice, the collector shall, upon the expiration of thirty days from the service thereof, cause a copy of the notice, with an affidavit by himself or a disinterested person of the service thereof, taken before a justice of the peace, to be filed and recorded in the registry of deeds of the county or district wherein the city or town lies. A note of reference to the record of said copy shall be made on the margin of the record of the collector's deed therein referred to; and from the time of such record the interest payable by law in respect of such deed shall cease, and said copy, when so recorded, shall have the effect to release and discharge all right and title acquired under such deed. The collector shall notify the treasurer of the city or town, who shall appropriate out of any funds in his hands the amount due in respect of said deed for the use and benefit of the persons entitled thereto, and shall pay it over on reasonable demand.

Tax to be reassessed if invalidity is caused by error in assessment; if otherwise, to be collected.  
P. S. 12, § 61.

SECT. 71. If the invalidity of a deed so recalled by the collector arose by reason of any error, omission, or informality in the assessment, the collector, after obtaining a surrender and discharge of the deed from the holder, or causing a copy of the notice to be filed and recorded as provided in the preceding section, shall forthwith notify the board by which the tax or assessment was laid, who shall immediately re-assess the same, as provided by section seventy-nine of chapter eleven of the Public Statutes. If such invalidity arose by reason of an error,

omission, or informality in the proceedings of the collector, he shall, after obtaining a surrender and discharge of the deed, or causing a copy of the notice to be filed and recorded as aforesaid, forthwith collect the unpaid tax or assessment referred to in such deed by proceedings in conformity to law.

SECT. 72. When the collector has reasonable cause to believe that a tax title, held by city or town under a sale or taking for payment of a tax or assessment, is invalid by reason of any error, omission, or informality in the assessment, sale, or taking, he may, [with the approval of the assessors, (these words repealed, Stat. 1889, ch. 334)], release, disclaim and annul such title by an instrument under his hand and seal, duly filed and recorded in the registry of deeds of the county or district where the land lies. If the invalidity of such title arose by reason of an error, omission, or informality in the assessment, the assessors shall immediately re-assess the same, as provided by section seventy-nine of chapter eleven of the Public Statutes.

Proceedings  
when collector  
believes tax title  
held by city or  
town, under  
sale or taking,  
invalid.  
P. S. 12, § 62.

#### LIEN OF CO-TENANTS.

SECT. 73. Any co-tenant, who pays the whole amount of tax assessed upon land held by him and one or more other persons as joint tenants or as tenants in common, shall have a lien upon the interest of each of his co-tenants in the land, to secure the payment to him of the proportion of such tax due and payable by each of said co-tenants respectively, together with the costs for enforcing the same: *provided*, that any person whose tax has been so paid by his co-tenant shall have the same rights in regard to recovering back taxes illegally assessed that he would have had if the tax had been paid under a protest by him in writing.

Co-tenant pay-  
ing whole tax to  
have lien on the  
interest of the  
other co-tenants  
for their propor-  
tion of tax, etc.  
P. S. 12, § 63.

SECT. 74. Such lien may be enforced in the manner provided for enforcing liens on buildings and lands; and shall be dissolved, unless the person desiring to avail himself thereof files in the registry of deeds for the county or district in which the lands are situated, within thirty days from the day of payment of said tax, a certificate setting forth the description, sufficiently accurate for identification, of the property intended to be covered by the lien, the names of the several co-tenants and the in-

Such lien to be  
dissolved,  
unless, etc.  
P. S. 12, § 64.

terest of each therein, the amount of tax paid, and the amount due from each co-tenant, which certificate shall be subscribed and sworn to by the person claiming the lien or by some one in his behalf, and shall be recorded in a book to be kept for the purpose by the register of deeds in each county or district, who shall be entitled to the same fees therefor as for recording mortgages of equal length.

**Such lien not valid against pre-existing recorded mortgage.**  
P. S. 12, § 65.

SECT. 75. Such lien shall not be of force against any mortgage actually existing and duly recorded prior to the recording of said certificate; and unless a suit for enforcing it is commenced within ninety days from the date of filing said certificate, the lien shall be dissolved.

#### MISCELLANEOUS PROVISIONS.

**Supreme judicial court to have equity powers.**  
P. S. 12, § 66.  
10 Met. 101.  
11 Gray, 410.

**City or town may make ordinance, etc., regulating election to sell or take. Otherwise collector to have option.**  
P. S. 12, § 67.

**When tax-list, etc., is committed to sheriff, etc.**  
P. S. 12, § 68.

**Sheriff's fees for collecting.**  
P. S. 12, § 69.

SECT. 76. In all cases of taking or sale of real estate for the payment of taxes assessed thereon, the supreme judicial court shall have equity powers, if relief is sought within five years from the taking or sale.

SECT. 77. Every city by ordinance, and every town by by-law, may direct which power its collector shall exercise to enforce the lien for taxes or assessments laid on real estate, that of sale or of taking; and in the absence of any such ordinance or by-law the collector may exercise either power at his discretion; but the passage of any such ordinance or by-law shall not render invalid any proceedings commenced before the passage of the same.

SECT. 78. When the tax-list and warrant of the assessors is committed to the sheriff or his deputy, he shall forthwith post, in some public place in the city or town assessed, an attested copy of said list and warrant; and shall make no distress for a tax till after thirty days from the time of such posting.

SECT. 79. If a person pays his tax on such list within said thirty days, the officer shall receive for his fees five per cent. on the sum assessed; but if a tax remains unpaid after said thirty days, the officer shall proceed to collect the same by distress or imprisonment, or by sale of real estate in the manner collectors are required to proceed in like cases. The officer may also levy his fees for service and travel, in the collection of each person's tax, as in other cases of distress and commitment, or sale of real estate.

SECT. 80. When a city council of a city or the inhabitants of a town vote to appoint their treasurer a collector, he may issue his warrants to the sheriff of the county, or his deputy, or to any of the constables of the city or town, returnable in sixty days, requiring them to collect any or all taxes due; and such warrants shall be in substance the same and confer like powers as warrants issued by assessors to collectors.

When treasurers are made  
collectors, how  
to proceed.  
P. S. 12, § 70.  
8 Allen, 330.

SECT. 81. Any officer to whom is given by law authority to collect taxes may appoint such deputy collectors of taxes as he may from time to time be authorized by the board of aldermen or selectmen, and deem it expedient to appoint, who shall give bonds for the faithful discharge of their duties, in such sums as the board of aldermen or selectmen may from time to time prescribe; and such deputies shall have the same powers as collectors of taxes in towns.

Appointment  
of deputy  
collectors.  
P. S. 12, § 71.

SECT. 82. The treasurer or other disbursing officer of any city or town may, and if so requested by the collector of that place shall, withhold payment of any moneys that may be made payable from the treasury of that place to any person whose taxes, assessed in that place, are then due, and wholly or partly unpaid: *provided*, that no greater sum shall thus be withheld than is necessary to pay the amount of tax then due as aforesaid, with interest and costs. The sum withheld shall be payable to the collector, who shall, if required, give a written receipt therefor. The person taxed may, in such case, have the same remedy as if he had paid such tax after a levy upon his goods. The collector's right as established by this section shall be valid against any trustee process not commenced, or any assignment not recorded, prior to the seventeenth day of May in the year eighteen hundred and seventy-eight.

Treasurers may  
withhold pay-  
ment of money  
due to person  
owing taxes.  
P. S. 12, § 72.

SECT. 83. Every collector shall once in two months, if required, exhibit to the mayor and aldermen or selectmen a true account of all moneys received on the taxes committed to him, and shall produce the treasurer's receipt for all money paid into the treasury by him.

Collectors to ex-  
hibit accounts  
every two  
months, if  
required.  
P. S. 12, § 73.

SECT. 84. If a collector neglects so to exhibit his accounts, he shall forfeit two and a half per cent. on the sums committed to him for collection.

Penalty for  
neglect.  
P. S. 12, § 74.

SECT. 85. The collector shall be credited with all sums abated according to law; with the amount of taxes

Collectors to be  
credited with  
abatements, etc.  
P. S. 12, § 75.

P. S. 12, § 75.  
9 Met. 503.  
18 Gray, 324.

Deficiency in  
state or county  
tax, how  
supplied.  
P. S. 12, § 76.

Same, when col-  
lectors neglect  
to pay.  
P. S. 12, § 77.

Remedy for col-  
lector's neglect.  
P. S. 12, § 78.  
132 Mass. 470.

If collector  
becomes insane,  
etc., selectmen  
may remove  
him.  
P. S. 12, § 79.  
7 Gray, 130.  
140 Mass. 389.

Tax-list of col-  
lector deceased  
or removed,  
how completed.  
P. S. 12, § 80.  
1 Met. 524.  
4 Gray, 258.  
140 Mass. 389.

assessed upon any person committed to prison within one year from the receipt of the tax-list by the collector, and before paying his tax; with any sums which the city or town may see fit to abate to him, due from persons committed after the expiration of a year; and with the amount of the taxes and charges in case of lands purchased or taken by the city or town for payment of taxes.

SECT. 86. If the collector fails to collect a tax without his own default, and there is a deficiency of the amount due on a state or county tax, such deficiency shall be supplied by him from the proceeds of the collection of city or town taxes, if any in his hands; and, if he have none, by the city or town treasurer, on the written requisition of the collector.

SECT. 87. If a collector of taxes neglects to pay, within the time required by law, such sums of money as ought by him to be paid to the state or county treasurer, the city or town by which such collector was appointed shall be liable for such sums, to be recovered in an action of contract by such state or county treasurer respectively.

SECT. 88. If a collector neglects seasonably to pay a state or county tax committed to him, whereby the city or town is compelled to pay the same, or neglects seasonably to account for and pay in a city or town tax committed to him, the city or town may recover the amount thereof, with all damages sustained through such neglect, and interest, by an action of contract, declaring on his official bond if any has been given.

SECT. 89. If a collector becomes insane, or in the judgment of the selectmen otherwise unable to discharge his duty, or absconds, removes, or in the judgment of the selectmen is about to remove, from the place, or if he refuses on demand to exhibit to the mayor and aldermen, or selectmen, his accounts of collections as herein provided, the selectmen may remove him from office and appoint another collector as in case of death of the collector.

SECT. 90. If a collector dies or is removed as provided in section eighty-nine, before completing the collection of a tax committed to him, the selectmen may appoint some suitable person to complete the collection, who shall receive a reasonable compensation, to be paid by the town, and the assessors shall commit the same tax-list to him, with their warrant, accordingly; and he shall

have the same powers and be subject to the same duties and liabilities as other collectors.

SECT. 91. The tax-list of a collector who is paid by a fixed salary may, upon the expiration of his term of office, be committed to his successor, as in the case of the death of a collector, subject to all the provisions of law relating to the transfer of a tax-list in case of the death of a collector, as far as applicable thereto.

SECT. 92. In case of the death or removal from office of a collector, his executors or administrators and all other persons into whose hands any of his unsettled tax-lists may come, shall forthwith deliver the same to the selectmen.

SECT. 93. Collectors shall be paid such compensation for their services as their cities or towns shall determine. In towns they shall be elected by ballot, and their compensation shall be fixed by the towns at the annual meeting, or at a special meeting called for that purpose.

SECT. 94. No tax paid to a collector shall be recovered back in any action unless it appears that it was paid after an arrest of the person paying it, a levy upon his goods, a notice of sale of his estate, or a protest in writing signed by the person paying the same, and that the action was brought by the person assessed for the tax within three months after such payment; and the damages awarded in an action based upon any error or irregularity in the assessment or apportionment of a tax shall not be greater than the excess of the tax above the amount for which the plaintiff was liable to be taxed; and no sale, contract or levy shall be avoided by reason of such error or irregularity.

#### REPEAL OF STATUTES.

SECT. 95. Chapter twelve of the Public Statutes, chapter two hundred and forty-three of the acts of the year eighteen hundred and eighty-two, chapter one hundred and one of the acts of the year eighteen hundred and eighty-three, chapters one hundred and sixty-two and two hundred and forty-two of the acts of the year eighteen hundred and eighty-four, chapter three hundred and twenty of the acts of the year eighteen hundred and eighty-six and chapter one hundred and forty-two of the acts of the year eighteen hundred and eighty-seven are hereby repealed. The provisions of this act, so far as they are

Tax-list  
of collector  
paid by a fixed  
salary to be  
transferred to  
his successor.  
P. S. 12, § 81.

If collector dies,  
etc., list to be  
delivered to  
selectmen.  
P. S. 12, § 82.  
1 Met. 525.  
124 Mass. 342.

Compensation  
of collectors.  
P. S. 12, § 83.

Taxes paid to  
collector, when  
recovered back.  
P. S. 12, § 84.  
9 Gray, 38.  
13 Gray, 476.  
1 Allen, 319.  
10 Allen, 48.  
102 Mass. 348.  
126 Mass. 98.  
127 Mass. 502.

Act, construc-  
tion, etc.

the same as those of existing laws, shall be construed as a continuation of such laws and not as new enactments; and the repeal by this act of any provision of law shall not affect any act done, liability incurred, or any right accrued and established, or suit or proceeding to enforce such right or liability under the authority of the repealed laws.

*As to forms.*

SECT. 96. The following forms may be used in proceedings for the collection of taxes under this chapter, and, if substantially followed, they shall be deemed sufficient for the proceedings to which they respectively relate; but this shall not be so construed as to prohibit the use of other suitable forms. These forms may also be used, so far as applicable, in the collection of betterments and other assessments of like character.

SECT. 97. This act shall take effect upon its passage.

#### SCHEDULE OF FORMS.

##### NO. 1.—FORM OF DEMAND UNDER SECTION 8.

COLLECTOR'S OFFICE, B, , 18 .

To \_\_\_\_\_.

Herewith find your tax bill due 18 , amounting to \$ . Payment of the same is hereby demanded. [If interest has been voted by the city or town, add] Interest at the rate of per cent per annum will be charged from 18 . You are hereby notified that unless your tax is paid in fourteen days from this date, with all legal charges, the collector will then proceed to collect the same according to law. C D,

Collector of Taxes for the of .

##### NO. 2.—FORM OF NOTICE OF SALE OF DISTRAINED PROPERTY UNDER SECTION 13.

###### COLLECTOR'S SALE.

Distrained upon a warrant of distress for non-payment of taxes, and will be sold by public auction on , the day of , 18 , at o'clock M., at , unless said taxes shall be paid before the sale, the following described property, to wit. [Here describe the property.]

B, , 18 . C D,

Collector of Taxes for the / of .

##### NO. 3.—FORM OF NOTICE OF ADJOURNMENT OF SALE UNDER SECTION 14.

To the original notice of sale, or a copy thereof, add the following, and post at the place of sale:—

The collector hereby gives notice that the above sale stands adjourned to , the day of , 18 , at the same hour and place.

B, , 18 .

C D,

*Collector of Taxes for the of .*

**NO. 4.—FORM OF CERTIFICATE TO BE MADE UPON AN ATTESTED COPY OF WARRANT WHEN CORPORATE STOCK IS SEIZED UNDER SECTION 15.**

COLLECTOR'S OFFICE, B, , 18 .

I hereby give notice that I have seized share of the capital stock of the [A B Company] standing in the name of by virtue of a warrant of distress, a copy of which is herewith presented. Said share being seized and distrained for the non-payment of a tax duly assessed upon the said by the assessors of for the year 18 , amounting to the sum of which the said , after due demand, has neglected and refused to pay.

B, , 18 .

C D,

*Collector of Taxes for the of .*

[Forms Nos. 5, 6 and 7, as given in chapter 390 of the Acts of 1888, are repealed, and the following forms bearing the same numbers are substituted therefor by Stat. 1889, ch. 334:—]

**NO. 5.—FORM OF CERTIFICATE REQUIRED BY SECTION 19 TO BE GIVEN BY A COLLECTOR WHEN A COMMITMENT IS MADE BY HIM.**

, 18 .

I hereby certify that the tax assessed in the of as of the first day of May in the year upon remains unpaid for fourteen days after demand therefor made by me; and that for want of goods and chattels whereof to make distress, I commit the said person to prison.

I also certify that the amount the said person is to pay for said tax and interest, and charges and fees, is dollars.

C D,

*Collector of Taxes for the of .*

**NO. 6.—FORM OF COLLECTOR'S WARRANT TO DISTRAIN OR COMMIT UNDER SECTION 23.**

COMMONWEALTH OF MASSACHUSETTS.

To the Sheriff of our several Counties, or their Deputies, or to any Constable of or Deputy Collector of Taxes for the of in the County of

GREETING:

WHEREAS, a resident of in the County of , was duly assessed as of the first day of May in the year eighteen hundred and , by the Assessors of the

of                    a tax in the sum of                    dollars; and the same now, after the expiration of fourteen days from the date of a demand made upon him by me in accordance with law for the payment of the same, remains unpaid: Therefore,

In the name of the Commonwealth of Massachusetts, you and each of you, are required and directed to distrain the goods or chattels of the said person so assessed sufficient to satisfy and pay the amount due for such tax and interest, and all fees and charges of keeping and selling the same, saving and excepting the tools or implements necessary for the trade or occupation of the said person so assessed, beasts of the plow necessary for the cultivation of his improved land; military arms; utensils for housekeeping necessary for upholding life; and bedding and apparel necessary for the said person so assessed and his family. And the goods and chattels so distrained by you, you are required to keep at the cost and charge of the owner, and within seven days after the seizure to sell the same at public auction, for the payment of the said amount due; having first posted up a notice of the sale in some public place in the town or city where found, forty-eight hours at least before the sale: *provided, however,* that you may, if you shall see fit, once adjourn said sale for a time not exceeding three days, in which case you shall forthwith post up a notice of such adjournment and of the time and place of sale. And if said distress shall be sold for more than the said amount due, you shall return the surplus to the owner of such goods or chattels upon demand, with an account in writing of the sale and charges. And if you cannot find sufficient goods and chattels belonging to the person assessed, whereon to make distress, you shall take the body of the said person and him commit to one of the common jails in the county in which you shall arrest him, there to remain until he shall pay said tax, and interest, and charges, and fees, or until he shall be discharged therefrom by due course of law.

And in case you shall commit said person so assessed to prison by virtue of this Warrant, you are required to give the keeper of the prison wherein he may be committed an attested copy of this Warrant, with a certificate thereon under your hand, setting forth that for want of goods and chattels of the said person whereof to make distress, you have taken his body and committed him to prison as aforesaid; and also setting forth the amount said person is to pay as his tax and interest, and fees and charges.

Hereof fail not, and make return of this Warrant, with your doings thereon, within sixty days from the date hereof.

Given under my hand and seal this        day of                    C D,                    [SEAL.]  
*Collector of Taxes for the        of        .*

**NO. 7.—FORM OF CERTIFICATE REQUIRED BY SECTION 23 TO BE ENDORSED ON COPY OF WARRANT IN CASE OF COMMITMENT.**

I hereby certify that, by virtue of the warrant, of which the within is a true copy, for want of goods and chattels whereof to make distress, I have taken the body of the within named                    and committed him to prison, and that the amount which he is to pay as his tax and interest, and fees and charge is                    dollars.

*Deputy Collector of Taxes for the        of        .*

**NO. 8.—FORM OF DEMAND OF TAX ON REAL ESTATE UNDER SECTION 30.**

COLLECTOR'S OFFICE, C, 18 .

To \_\_\_\_\_

In compliance with the statute I hereby demand of you the payment of \_\_\_\_\_ dollars, that being the amount of tax assessed for the year 18 on the estate in this *city or town* [here give a brief statement of the estate] and owned (or occupied) by you at the date of assessment. You are hereby notified that if said amount, together with the legal costs and charges thereon, is not paid within fourteen days from this date, the said estate will be sold by public auction, pursuant to law.

C D,

*Collector of Taxes for the of .*

N. B. When the demand is made upon an attorney this form should be changed accordingly.

**NO. 9.—FORM OF COLLECTOR'S NOTICE OF SALE OF REAL ESTATE TO BE PUBLISHED IN A NEWSPAPER UNDER SECTIONS 35 AND 36.**

COLLECTOR'S NOTICE.

B, , 18 .

The owners and occupants of the following described parcels of real estate situated in the *city or town* of \_\_\_\_\_, in the county of \_\_\_\_\_ and Commonwealth of Massachusetts, and the public are hereby notified that the taxes thereon severally assessed for the years hereinafter specified, according to the list committed to me as collector of taxes for said \_\_\_\_\_ by the assessors of taxes, remain unpaid, and that said parcels of real estate will be offered for sale by public auction at the \_\_\_\_\_ in said \_\_\_\_\_ on \_\_\_\_\_, 18 , at o'clock M., for the payment of said taxes with costs and charges thereon, unless the same shall be previously discharged. [Here state the name of the party taxed, if known; a substantially accurate description of the estate; the year in which the tax is assessed; and the amount of the tax on each parcel of real estate.]

C D,

*Collector of Taxes for the of .*

No. 10.—[Under section 37, use form No. 9 for notice to be posted on the premises, with the words, "This estate to be sold for unpaid taxes," written or printed at the top of the notice.]

**NO. 11.—FORM OF AFFIDAVIT OF DISINTERESTED PERSON, DEPUTY COLLECTOR OR COLLECTOR OF DEMAND UNDER SECTION 39 TO BE RECORDED IN THE REGISTRY OF DEEDS.**

S, , 18 .

I [A B, a disinterested person, or a deputy collector, or collector] hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 18 , I served upon E F a demand for the payment of a tax of \_\_\_\_\_ dollars assessed upon him by the assessors of \_\_\_\_\_ in 18 , upon the

*Laws Regulating Taxation.* [1888, ch. 390.]

estate in said [here give a substantially accurate description of the estate], with a notice that if said amount, together with the legal costs (and interest) thereon, was not paid within fourteen days from the date thereof that the said estate would be sold by public auction, pursuant to law.

A B.

## COMMONWEALTH OF MASSACHUSETTS.

H , ss. Then personally appeared the said A B, and made oath that this statement by him subscribed is true.

18

Before me,

Justice of the Peace.

## NO. 12.—FORM OF AFFIDAVIT UNDER SECTION 39, WHEN THE DEMAND IS MADE UPON TWO OR MORE DISTINCT PERSONS.

S. , 18 .

I [*A B, a disinterested person, or a deputy collector, or collector*] hereby certify that on or since the day of , 18 , I have served on each of the parties hereinabove mentioned, on the date and in the manner specified, as may be seen by reference to their respective names, a demand like the blank hereunto attached, the blanks being first filled with the date, name, amount of the tax, and location of the real estate.

A B.

Names.	Amount of Tax.	Manner and Date of Service.

## COMMONWEALTH OF MASSACHUSETTS.

H , ss. S. , 18 . Then personally appeared the said A B, and made oath that the above statement by him subscribed is true.

Before me,

Justice of the Peace.

[Here annex the blank form, No. 8, referred to in the affidavit.]

## NO. 13.—FORM OF AFFIDAVIT OF POSTING AND PUBLISHING ADVERTISEMENT OF SALE UNDER SECTION 39.

S. , 18 .

I, A B, of , in the county of , and Commonwealth of Massachusetts [*a disinterested person, or a deputy collector or collector of taxes*], hereby certify that I witnessed the posting [or posted] on the premises named therein the printed notice hereto annexed of the collector of taxes of the (town or city) of for the sale of real estate [or of the various parcels of real estate] situate in said , for non-payment of taxes, as specified in said notice hereto annexed, also in a convenient and public place, to wit: The ; in said (town or city), and that said notice was advertised three weeks successively in the , a newspaper published in (city or town) [*or if there is no such newspaper, state that fact and add: in said County*], the last publication being at least one

week before the advertised time of sale; and that said posting was done three weeks before the time of sale, in accordance with law.

A B.

COMMONWEALTH OF MASSACHUSETTS.

H , ss. S, , 18 .  
Then personally appeared the above named , and made oath that the foregoing statements by him subscribed are true.

Before me,

*Justice of the Peace.*

[Here annex a copy of the advertisement.]

NO. 14. — FORM OF DEED UNDER SECTIONS 43 AND 44.

COMMONWEALTH OF MASSACHUSETTS.

To all Persons to whom these Presents may come,

I, , Collector of Taxes for the of , in the County of and Commonwealth of Massachusetts,

SEND GREETING:

WHEREAS, the Assessors of Taxes of said of , in the lists of assessments for taxes, which they committed to me to collect for the year one thousand eight hundred and , duly assessed as owner of the real estate in said , which is hereinafter described, the sum of dollars and cents, for State, City or Town, and County Taxes thereon; and whereas, on the day of A. D. 18 , I duly demanded of said [if the demand was made on a mortgagee or an attorney of a non-resident owner here insert the fact] the payment of said taxes, so as aforesaid assessed on said real estate, and the same were not paid; and whereas, after the expiration of fourteen days from the time of demanding payment of said taxes as aforesaid, the same still remaining unpaid, I duly advertised said real estate to be sold by public auction for the payment of said taxes, and all incidental costs and expenses, on the , A. D. 18 , at o'clock in the , at the , in said , by publishing an advertisement thereof, containing also a substantially accurate description, and the name of the owner of said real estate, and the amount of the taxes so as aforesaid assessed thereon, in the , a newspaper published in , in the county where said real estate lies, three weeks successively, the last publication whereof was one week before the time appointed for the sale, and by posting the said advertisement in public and convenient place in said , to wit: the , and also on said real estate, three weeks before the time appointed for said sale; and whereas, said taxes so as aforesaid assessed on said real estate not being paid, I proceeded at the time and place appointed as aforesaid for the sale, to sell said real estate by public auction for the discharging and payment of said taxes thereon, and said incidental costs and expenses \* [if the sale is adjourned add here], and no person appeared and bid for the estate thus offered for sale an amount equal to the said taxes and costs and expenses, and I thereupon, at said time and place appointed for sale, adjourned said sale until the day of , A. D. 18 , at o'clock in the forenoon, at the same place, and then and there made public proclamation of said adjournment; and in like manner in all respects, I adjourned said sale from time to time, to the same hour and place, and then and there made public proclamation of said adjournment; and at the time and place so fixed and proclaimed for making said sale on each of the several days, at

the said hour and place, I proceeded to offer for sale said real estate by public auction for the payment of said taxes, cost and expenses, and no person appeared at either time so fixed by adjournment for said sale and bid a sum equal to said taxes, costs and expenses, until on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_; and at the said time and place so fixed for said sale by the last of the said adjournments, namely, on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 [use such of these averments as will conform to the facts], I proceeded again to offer for sale by public auction said real estate for the payment of said taxes and costs and expenses, and the said real estate was struck off to \_\_\_\_\_ of \_\_\_\_\_, in the county of \_\_\_\_\_ and State of \_\_\_\_\_, for the sum of \_\_\_\_\_ dollars and \_\_\_\_\_ cents, he being the highest bidder therefor;

Therefore, know ye, that I, the said \_\_\_\_\_, Collector of Taxes as aforesaid, by virtue of the power vested in me by law, and in consideration of the said sum of \_\_\_\_\_ dollars and \_\_\_\_\_ cents to me paid by said \_\_\_\_\_, the receipt whereof I do hereby acknowledge, do hereby give, grant, bargain, sell and convey unto \_\_\_\_\_ the said the following described real estate, the same being the land taxed as aforesaid, to wit: [Here describe the estate.]

To have and to hold the same, to \_\_\_\_\_ heirs and assigns, to \_\_\_\_\_ their use and behoof forever; subject to the right of redemption by any person legally entitled to redeem the same.

And I, the said collector, do covenant with the said \_\_\_\_\_ heirs and assigns, that the sale aforesaid has, in all particulars, been conducted according to the provisions of law. †

In witness whereof, I, the said \_\_\_\_\_, Collector as aforesaid, have hereunto set my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and \_\_\_\_\_.

[SEAL.]

*Collector of Taxes for the \_\_\_\_\_ of \_\_\_\_\_.*

*Signed, sealed and delivered in presence of \_\_\_\_\_.*

ss.

Then personally appeared the above named \_\_\_\_\_, Collector of Taxes for the \_\_\_\_\_ of \_\_\_\_\_, and acknowledged the foregoing instrument to be his free act and deed.

Before me,

*Justice of the Peace.*

18

#### NO. 15 — FORM OF DEED WHEN THE CITY OR TOWN IS THE PURCHASER UNDER SECTIONS 48 AND 50.

##### COMMONWEALTH OF MASSACHUSETTS.

[Proceed as in No. 14 to the \* and continue as follows: —] and no person appeared and bid for the estate thus offered for sale an amount equal to the said taxes and costs and expenses, and I thereupon, at said time and place appointed for sale, adjourned said sale until the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_, at \_\_\_\_\_ o'clock in the forenoon, at the same place, and then and there made public proclamation of said adjournment; and in like manner in all respects, I adjourned said sale from time to time, to the same hour and place, and then and there made public proclamation of said adjournments; and at the time and place so fixed and proclaimed for making said sale on each of said several days, I proceeded to offer for sale said real estate by public auction for the payment of said taxes, costs and

expenses, and no person appeared at either time so fixed by adjournment for said sale and bid a sum equal to said taxes, costs and expenses, and at the time and place so fixed for said sale by the last of the said adjournments, namely, on the      day of      , A. D. 18      , at      o'clock in the forenoon, I made a public declaration of all the facts hereinbefore recited; and no person then appeared and bid a sum equal to said taxes, costs and expenses [if only one adjournment is made, change these averments to conform to the facts]; and I thereupon then and there immediately gave public notice that I should, and that I then and there did purchase on behalf of the said      of      , said real estate for the sum of      dollars and      cents, being the amount of said taxes and said incidental costs and expenses;

Therefore know ye, that I, the said      , Collector of Taxes as aforesaid, by virtue of the power vested in me by law, and in consideration of the premises, hereby give, grant, bargain, sell and convey unto the said      of      , the following described real estate, the same being the land taxed as aforesaid, to wit: [Here describe the estate.]

To have and to hold the same, to the said      of      , and its assigns, to its and their use and behoof forever; subject to the right of redemption by any person legally entitled to redeem the same.

And I, the said Collector, do covenant with the said      of      , and its assigns, that the sale aforesaid has, in all particulars, been conducted according to the provisions of law. [Conclude as in No. 14 from the †.]

**NO. 16.—FORM OF DEED TO CITY OR TOWN, WHEN THE PURCHASER FAILS TO PAY, ETC., UNDER SECTIONS 49 AND 50.**

[Proceed as in No. 14 to the \* and continue as follows:—] and the said real estate was struck off to      of      in the County of      and State of      for the sum of      dollars and      cents, he being the highest bidder therefor; and whereas, the said      failed to pay to me the sum offered by him as aforesaid, and receive his deed of the premises bid off by him, within ten days after the said sale, and the said sale became null and void, and the said      of      thereby became the purchaser of the premises so bid off by the said      for the sum of      dollars and      cents, being the amount of said taxes and said incidental costs and expenses;

Therefore know ye, that I, the said      , Collector of Taxes as aforesaid, by virtue of the power vested in me by law, and in consideration of the premises, hereby give, grant, bargain, sell and convey unto the said      of      , the following described real estate, the same being the land taxed as aforesaid, to wit: [Here describe the estate.]

To have and to hold the same, to the said      of      , and its assigns, to its and their use and behoof forever; subject to the right of redemption by any person legally entitled to redeem the same.

And I, the said Collector, do covenant with the said      of      , and its assigns, that the sale aforesaid has, in all particulars, been conducted according to the provisions of law. [Conclude as in No. 14 from the †.]

**NO. 17.—FORM OF NOTICE OF INTENTION TO TAKE REAL ESTATE  
UNDER SECTION 52.**

**COLLECTOR'S NOTICE.**

The owners and occupants of the following described *parcels* of real estate situate in the \_\_\_\_\_ of \_\_\_\_\_, in the County of \_\_\_\_\_, and Commonwealth of Massachusetts, and all other persons, are hereby notified that the *taxes* thereon, *severally* assessed for the year hereinafter specified, according to the list committed to me as Collector of Taxes for the said \_\_\_\_\_ of \_\_\_\_\_, by the Assessors of Taxes of said \_\_\_\_\_, remain unpaid, and that said *parcels* of real estate will be taken for the said \_\_\_\_\_ of \_\_\_\_\_, on the \_\_\_\_\_ day of A. D. 18 \_\_\_\_\_, at \_\_\_\_\_ o'clock M., for the payment of said taxes, together with the costs and charges thereon, unless the same shall be previously discharged. [Here state the name of owner or occupant, a description of the parcel or parcels of lands, the year for which the taxes were assessed, and the sum assessed upon each parcel.] C D,

*Collector of Taxes for the \_\_\_\_\_ of \_\_\_\_\_.*

B. 18 .

**NO. 18.—FORM OF AFFIDAVIT OF DEMAND AND NOTICE TO BE  
ANNEXED TO THE INSTRUMENT OF TAKING UNDER SECTION 58.**

I, C D, of \_\_\_\_\_, in the County of \_\_\_\_\_, and Commonwealth of Massachusetts, on oath depose and say that on the \_\_\_\_\_ day of A. D. 18 \_\_\_\_\_, I, as Collector of Taxes for the \_\_\_\_\_ of \_\_\_\_\_, made a written demand on \_\_\_\_\_ for the amount of the tax assessed by the assessors of said \_\_\_\_\_ of \_\_\_\_\_, as of the first day of May, A. D. 18 \_\_\_\_\_, upon the said \_\_\_\_\_, with the costs then due on certain real estate situated in said \_\_\_\_\_ of \_\_\_\_\_, by [Here state manner in which the demand was made], of which the following is a true copy:—

“COLLECTOR'S OFFICE,

18 .

To \_\_\_\_\_, I hereby demand of you the payment of dollars and \_\_\_\_\_ cents, that being the amount of tax assessed for the year 18 \_\_\_\_\_ by the assessors of \_\_\_\_\_, on the real estate [Here describe the estate] owned by you. You are hereby notified that if said amount, together with the costs thereon, is not paid within fourteen days from this date, the said real estate will be taken for said taxes for the said \_\_\_\_\_ of \_\_\_\_\_ Tax, \$ \_\_\_\_\_; costs and charges, \$ \_\_\_\_\_ C D,

*Collector of Taxes for the \_\_\_\_\_ of \_\_\_\_\_.”*

[If notice is published and posted, add:] And I, the said C D, do further depose and say that I posted and published notices, of which the following is a copy [Here annex a copy of the notice], as follows: A copy thereof was posted on [Here state where posted], and I also published a copy of said notice in the \_\_\_\_\_, a newspaper published in said \_\_\_\_\_. [If there be no such paper published in said town, state the fact and add, “in \_\_\_\_\_ in said county”], three

weeks successively, that the posting of said notices and the first publication thereof was more than fourteen days after the making the demand as aforesaid; and I do further depose and say that, at the date of the instrument of taking, hereto annexed, the amount of taxes due on the estate therein described, with the costs and expenses, amounted to the sum of      dollars and      cents, and that the parcel or *parcels* or *lot* or *lots* of land were taken for the reason that the taxes remained unpaid at the time of the said taking.

C D,

*Collector of Taxes for the      of*

B      , ss.

18 .

Then personally appeared the above named C D, and made oath that the foregoing affidavit by him subscribed is true.

Before me,

*Justice of the Peace.*

#### NO. 19.—FORM OF TAKING OF REAL ESTATE UNDER SECTION 54.

Whereas, the tax assessed by the assessors of      as of the first day of May, in the year 18      , upon E F as the owner (or occupant) of the real estate hereinafter described, was duly committed to me as Collector of Taxes for said      of      ; and whereas, the said taxes, amounting to      dollars and      cents, have not been paid; and whereas, a demand for the payment of said taxes and the costs and expenses then due was made by me on the said E F on the      day of      , last past, in conformity to law; and whereas, notice of my intention to take said real estate by virtue of the authority vested in me as Collector of Taxes for said      has been duly made, as by law required; and whereas, the said taxes, at the date of this instrument, remained unpaid; now, therefore, know all men by these presents, that I, C D, as Collector of Taxes as aforesaid, by virtue of the power and authority in me vested as aforesaid, have taken, and by these presents do take, for the said      of      , subject to redemption according to law, the following described lot or parcel of land, with the buildings thereon, the same being the estate assessed as aforesaid, to wit: [Here describe the estate.] The said E F is the only person known to me as owner of the above described estate.

In witness whereof, I, the said C D, as Collector as aforesaid, hereunto set my hand and seal this      day of      , in the year eighteen hundred and

C D,      [SEAL.]

*Collector of Taxes for the      of*

#### NO. 20.—FORM OF DEED BY CITY OR TOWN WHEN ESTATE IS REDEEMED UNDER SECTION 57, TO BE EXECUTED BY THE PROPER OFFICERS OF THE CITY OR TOWN.

KNOW ALL MEN BY THESE PRESENTS,

That the      of      , in consideration of      , to it paid by      of      , the receipt whereof is hereby acknowledged, does hereby *remise, release, and forever quitclaim* unto the said      all

the right, title and interest which the said \_\_\_\_\_ of \_\_\_\_\_ acquired, by or under a deed made to it by \_\_\_\_\_, the Collector of Taxes for said (City or Town), dated the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and \_\_\_\_\_, and recorded with Deeds, Lib. \_\_\_\_\_ Folio \_\_\_\_\_ in and to the following parcel of real estate in said \_\_\_\_\_, viz.: [Here describe the estate.]

To have and to hold the above released premises, with all the privileges and appurtenances to the same belonging, to the said \_\_\_\_\_, heirs and assigns, to \_\_\_\_\_ use and behoof forever.

In witness whereof, the said \_\_\_\_\_ of \_\_\_\_\_ has caused its corporate seal to be hereunto affixed, and these presents to be signed, acknowledged and delivered in its name and behalf by \_\_\_\_\_, its \_\_\_\_\_, hereto duly authorized, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord eighteen hundred and \_\_\_\_\_.

Town (or City) of \_\_\_\_\_.

[SEAL.]

*Signed and sealed in presence of*

*By*

**NO. 21.—FORM OF AFFIDAVIT OF A DISINTERESTED PERSON OF SEARCH FOR PURCHASER, HIS AGENT OR ATTORNEY WHEN THEY CANNOT BE FOUND, UNDER SECTION 58.**

I, A B, on oath depose and say that in behalf of C D, who claims a right to redeem certain lands situated in the \_\_\_\_\_ of \_\_\_\_\_, which were sold by \_\_\_\_\_ Collector of Taxes for said \_\_\_\_\_ for non-payment of taxes assessed upon \_\_\_\_\_ and described in a deed of said Collector to \_\_\_\_\_, dated \_\_\_\_\_ 18\_\_\_\_\_, and recorded with \_\_\_\_\_ Deeds, Libro \_\_\_\_\_ Folio \_\_\_\_\_. I have made diligent search for said purchaser in the place of which he is described as a resident, and that I have also made diligent search for an agent or attorney of such purchaser, but after such diligent search have been unable to find either the purchaser or any such agent or attorney.

A B.

, ss.  
Then personally appeared the above named A B, and made oath that the foregoing statement by him subscribed is true.

Before me,

*Justice of the Peace.*

**NO. 22.—FORM OF RECEIPT BY COLLECTOR TO A MORTGAGEE, UNDER SECTION 60.**

COLLECTOR'S OFFICE,

18 .

I, \_\_\_\_\_, Collector of Taxes for the \_\_\_\_\_ of \_\_\_\_\_, hereby certify that the Assessors of Taxes of said \_\_\_\_\_ of \_\_\_\_\_, in the list of assessments for taxes, which they committed to me to collect for the year one thousand eight hundred and \_\_\_\_\_, duly assessed \_\_\_\_\_ the sum of \_\_\_\_\_ dollars and \_\_\_\_\_ cents, as owner of the real estate situated as follows, viz.:—

and I further certify that the said \_\_\_\_\_ neglected to pay such tax for three months after demand, and I thereupon made a demand therefor upon \_\_\_\_\_ who claimed to be the holder

of a mortgage upon said real estate; and that the said  
has paid to me the sum of dollars and  
cents, being the amount of said tax, with all intervening charges  
and expenses, the receipt of which I hereby acknowledge.  
C D,

*Collector of Taxes for the of*

S , ss. 18 .  
Then personally appeared the above named , Collector of the  
of , and made oath to the statement by him subscribed.  
Before me,  
*Justice of the Peace.*

**NO. 23.—FORM OF RECEIPT BY COLLECTOR UNDER SECTIONS 61  
AND 62.**

COLLECTOR'S OFFICE, 18 .

I, Collector of Taxes for the of ,  
hereby certify that the Assessors of Taxes of said of  
, in the list of assessments for taxes, which they com-  
mitted to me to collect for the year one thousand eight hun-  
dred and , duly assessed the sum of  
dollars and cents, as owner of the real estate situated  
as follows, viz.:—

and I further certify that proceedings have been com-  
menced by me for the sale of said real estate for said tax, and that  
who claimed to be the holder of a mortgage thereon, has  
paid to me the sum of dollars and cents, being  
the amount of said tax, with all intervening charges and expenses,  
the receipt of which I hereby acknowledge, said receipt having been  
demanded by said mortgagee. C D,

*Collector of Taxes for the of*

S , ss. 18 .  
Then personally appeared the above named , Collector of  
Taxes for the of , and made oath to the statement by  
him subscribed. Before me,  
*Justice of the Peace.*

**NO. 24.—FORM OF NOTICE OF SALE OF UNREDEEMED REAL  
ESTATE, IN BEHALF OF A CITY OR TOWN, WITHIN TWO YEARS  
AFTER EXPIRATION OF THE RIGHT OF REDEMPTION, UNDER  
SECTION 66.**

SALE OF UNREDEEMED REAL ESTATE BY THE OF .

COLLECTOR'S OFFICE, B, 18 .

In conformity with the laws of the Commonwealth of Massachu-  
setts, the public and all persons interested as former owners and  
occupants of each of the following described parcels of real estate  
situated in the of in the county of and Com-  
monwealth aforesaid, are hereby notified that said parcels having  
been conveyed according to law to said [Town or City of] for non-  
payment of taxes and assessments and the time within which each  
of the estates might be redeemed by the owners thereof having

expired, each of said parcels will be offered for sale in accordance with Section 65, of Chapter \_\_\_\_\_ of the Acts of the year 1888, by public auction at the \_\_\_\_\_ in said B \_\_\_\_\_ on the day of A. D. 18 \_\_\_\_\_, at \_\_\_\_\_ o'clock M., and to the highest bidder for each of the several parcels a quitclaim deed will be delivered. For further particulars reference is made to the Registry of Deeds of the County of \_\_\_\_\_, the volume and folio numbers following the description of each parcel, indicating the record of the deed under which the said \_\_\_\_\_ of \_\_\_\_\_ now holds title to the estate described.

The sums set against the several estates show the amounts due thereon respectively for the taxes and assessments for the non-payment of which said estate was sold to (or taken by) the said together with the subsequent taxes and assessments, interest on the same, and all lawful costs and charges. And none of the said estates will be sold for less than the amount set against the said estates, respectively.

[Here set out the name of original owner or occupant, if known, a description of each parcel, the place of registry, vol. and folio, the years in which assessed and the amount for not less than which the sale will be made.]

C D,

*Collector of Taxes for the \_\_\_\_\_ of \_\_\_\_\_.*

**NO. 25.—FORM OF DEED OF UNREDEEMED TAX TITLE UNDER SECTION 66.**

KNOW ALL MEN BY THESE PRESENTS,

That, whereas the real estate hereinafter described was by deed of \_\_\_\_\_, Collector, dated A. D. 18 \_\_\_\_\_, and recorded with Deeds, Lib. Fol. \_\_\_\_\_, duly conveyed to the \_\_\_\_\_ of \_\_\_\_\_, a municipal corporation legally established in the County of \_\_\_\_\_ and Commonwealth of Massachusetts, for the non-payment of taxes, and whereas no person lawfully entitled has, within the time prescribed by law, redeemed said real estate, and whereas I, the Collector of Taxes of the said \_\_\_\_\_ of \_\_\_\_\_, acting under the provisions of chapter \_\_\_\_\_ of the Acts of the year eighteen hundred and eighty-eight, duly advertised said real estate to be sold by public auction on the \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_, at \_\_\_\_\_ o'clock, in the forenoon, at the \_\_\_\_\_ in said \_\_\_\_\_ of \_\_\_\_\_, by publishing an advertisement thereof, containing a substantially accurate description of said real estate in the \_\_\_\_\_, a newspaper published in \_\_\_\_\_, three weeks successively, the last publication whereof was at least one week before the time appointed for the sale, and by posting a like advertisement in public and convenient place in said \_\_\_\_\_ of \_\_\_\_\_, to wit: the \_\_\_\_\_, in said city or town, and also on said real estate, three weeks before the time appointed for said sale; and whereas, the amounts due on said estate not being paid, the \_\_\_\_\_ of \_\_\_\_\_ by the \_\_\_\_\_ Collector, \_\_\_\_\_, thereto duly authorized by statute, proceeded at the time and place appointed as aforesaid for the sale, to sell real estate by public auction, and the said real estate was then and there struck off to \_\_\_\_\_ of \_\_\_\_\_, in the County of \_\_\_\_\_, and State of \_\_\_\_\_, for the sum of \_\_\_\_\_ dollars and \_\_\_\_\_ cents, he being the highest bidder therefor;

Now, therefore, the \_\_\_\_\_ of \_\_\_\_\_, by its Collector of Taxes, by virtue of the statutes in such case made and provided, and every

other power hereto it enabling, in consideration of      dollars and      cents paid by said      , the receipt whereof is hereby acknowledged, does hereby *remise, release, and forever quitclaim* unto the said      , heirs and assigns, all the right, title and interest which the said      of      acquired, by or under the deed above mentioned, in and to the following parcel of real estate in said      , viz.: [Here describe the estate.]

To have and to hold the above released premises, with all the privileges and appurtenances thereto belonging, to the said      , his heirs and assigns, to his and their use and behoof forever.

In witness whereof, the said      of      has caused its seal to be hereto affixed and these presents to be signed, acknowledged and delivered in its name and behalf by its Collector of Taxes, hereto duly authorized by law this      day of      , in the year eighteen hundred and

Town (or City) of      [SEAL.]

By C D,

*Collector of Taxes for the      of*

[To be acknowledged by the Collector as the free act and deed of the City or Town.]

**NO. 26.—FORM OF AFFIDAVIT OF COLLECTOR OF THE NON-APPEARANCE OF A PURCHASER, OR THE FAILURE OF BIDDER TO PAY THE SUM BID, UNDER SECTION 67.**

I, C D, Collector of Taxes for the      of      in the County of      and Commonwealth of Massachusetts on oath depose and say that the advertisement of the sale of unredeemed real estate, a copy of which is hereto annexed, was published and posted according to the requirements of law, and that at the time and place of sale as stated in the same [no person appeared and bid for the real estate advertised in said advertisement against the name of      the sum or amount therein stated, or more] and the estate advertised as aforesaid against the name of      was struck off to A B, for the sum of      dollars and      cents, he being the highest bidder therefor. I further depose and say that said A B failed to pay to me as such Collector, within ten days, the sum offered by him for said estate.

C D,

*Collector of Taxes for the      of*

S      , ss.

Then personally appeared the above named C D, Collector of Taxes for the      of      , and made oath that the above statement by him subscribed is true.

18

*Before me,*      *Justice of the Peace.*

[Here annex a copy of the advertisement.]

**NO. 27.—FORMS OF NOTICES WHEN TAX TITLE IS DEEMED INVALID, UNDER SECTIONS 69 AND 72.**

(FROM THE ASSESSORS TO THE COLLECTOR.)

OFFICE OF THE BOARD OF ASSESSORS,

18 .

*To the Collector of Taxes for the      of*

*Sir:* You are hereby notified that the tax assessed as of the first day of May, 18      , in the name of      upon an estate estimated

to contain [here insert the area] land, situated [here insert the name of street or other description] was invalid by reason of error in assessment; and that any deed given by you in consequence of a sale for the non-payment of such tax conveyed no valid title to the purchaser. And the Board approves of your sending a notice to that effect to the owner of said estate.

Board of Assessors of the \_\_\_\_\_ of \_\_\_\_\_, by  
A B,  
*One of said Assessors.*

No. 28.

(FROM THE COLLECTOR TO THE HOLDER OF THE TITLE.)

COLLECTOR'S OFFICE, 18 .

To \_\_\_\_\_

You are hereby notified that I have reason to believe that the tax assessed as of the first day of May, 18 , in the name of \_\_\_\_\_ upon an estate estimated to contain \_\_\_\_\_ of land, situated [here describe the estate], being the same estate conveyed to by \_\_\_\_\_ Collector, and recorded with \_\_\_\_\_ Deeds, Libro

Folio \_\_\_\_\_ was, in my opinion, invalid by reason of an error *in the assessment or in the proceedings for the sale.* [Here give a brief statement of the defect:] \_\_\_\_\_ and I do hereby, with the approval of the assessors of said \_\_\_\_\_, notify and require you, within thirty days from the time when this notice shall be served upon you, to surrender and discharge the deed so given, and to receive from the \_\_\_\_\_ of \_\_\_\_\_ the sum due therefor, with interest as provided by law, or to file with the Collector a written statement that you refuse to make such surrender and discharge.

C D,  
*Collector of Taxes for the \_\_\_\_\_ of \_\_\_\_\_ .*

## COMPILATION OF LAWS

### REGULATING TAXATION BY THE LOCAL ASSESSORS.

PASSED SINCE THE ENACTMENT OF THE PUBLIC STATUTES.

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[1882, Chap. 76.]

#### **An Act relating to Personal Estate subject to Taxation.**

SECTION 1. Section four of chapter eleven of the Public Statutes is hereby amended in the sixth line by striking out the word "due," and inserting in place thereof the words "or indebtedness."

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[1882, Chap. 183.]

#### **An Act relative to the Payment of Indebtedness by Cities and Towns.**

SECTION 1. Any city or town required by chapter twenty-nine of the Public Statutes to establish a sinking fund for the payment of its indebtedness may, instead thereof, by a majority vote provide for the payment of such indebtedness in such annual proportionate payments as will extinguish the same within the time prescribed in said chapter; and when such vote has been heretofore or shall be hereafter passed, the amount required thereby shall, without further vote, be assessed by the assessors in each year thereafter, until the debt shall be extinguished, in the same manner as other taxes are assessed under the provisions of section thirty-four of chapter eleven of the Public Statutes.

SECT. 2. The return required by section ninety-one of chapter eleven of the Public Statutes shall state the amount of any sinking fund established, and if not so established whether action has been taken in accordance with the provisions of the preceding section and the amounts raised and applied thereunder for the current year.

[1882, Chap. 165.]

**An Act relating to the Assessment of Taxes on the Personal Estate of Insolvents, Joint Owners, and Tenants in Common.**

SECTION 1. Section twenty of chapter eleven of the Public Statutes is hereby amended by adding thereto the following words: "*Eighth.* Personal property taxable as such, held in trust by an assignee or assignees under the insolvent law or any bankrupt law or under any voluntary assignment for the benefit of creditors, shall be assessed to such assignee or assignees in the place where the insolvent bankrupt or assignor had his principal place of business; and if he had no such place of business, then in the place of his residence. *Ninth.* Personal property of joint owners or tenants in common other than partners shall be assessed to such owners, according to their respective interests, in the places where they respectively reside."

[1882, Chap. 175.]

**An Act relating to the Assessment of Taxes upon Mortgaged Real Estate.**

SECTION 1. Any mortgagor or mortgagee of real estate may bring in to the assessors of the town or city where such real estate lies, within such time as shall be specified for bringing in the lists as provided in section thirty-eight of chapter eleven of the Public Statutes, a statement under oath of the amount due on each separate lot or parcel of such real estate, and the name and residence of every holder of an interest therein as a mortgagee or mortgagor. When such property is situated in two or more places, or when a recorded mortgage includes for one sum two or more estates or parts of an estate, an estimate of the amount of the mortgagee's interest in each estate or part of an estate shall be given in such statement. The assessors shall, from such statements or otherwise, ascertain the proportionate parts of such estates that are the interests of mortgagees and mortgagors respectively, and shall assess the same. Whenever, in any case of mortgaged real estate, a statement is not brought in as herein provided, no tax for the then current year on such real estate shall be invalidated for the reason that a mortgagee's interest therein has not been assessed to him.

SECT. 2. The provisions of the preceding section shall be included in the notice to be given by the assessors under the provisions of section thirty-eight of chapter eleven of the Public Statutes.

SECT. 3. Section fourteen of said chapter eleven is hereby amended by striking out the words "taxable real estate," in the first line of said section, and inserting in place thereof the words "real estate not exempt from taxation under the provisions of section five of this chapter."

[1882, Chap. 217.]

**An Act providing for Returns of Property held for Literary, Benevolent, Charitable or Scientific Purposes.**

SECTION 1. The notice to be given by assessors under the provisions of section thirty-eight of chapter eleven of the Public Statutes shall require all persons and corporations to bring in to the assessors, within a time therein specified, not later than the first day of July in the then current year, true lists of all real and personal estate held by such persons and corporations respectively for literary, benevolent, charitable or scientific purposes on the first day of May in said year, together with statements of the amounts of all receipts and expenditures by such persons or corporations for said purposes during the year next preceding said first day of May; such lists and statements to be in such detail as may be required by the tax commissioner: *provided*, that the assessors may accept any such list and statement after the time so specified if they shall be satisfied that there was good cause for the delay; but no list or statement shall be received after the first day of August in the then current year. [See *proviso*, Stat. 1888, ch. 323.]

SECT. 2. If any person or corporation wilfully omits to bring in the list and statement of real and personal estate as herein required, the estate so held shall not be exempt from taxation in the then current year under the provisions of the third clause of section five of said chapter.

SECT. 3. The tax commissioner shall cause to be printed and distributed to assessors suitable printed forms for such lists and statements, and assessors shall forward to the tax commissioner all such lists and statements received by them with the statements required by section ninety of said chapter; and the tax commissioner shall

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cause to be prepared and submitted with his annual report to the general court such an abstract of the particulars contained in such lists and statements as he shall deem for the public interest.

SECT. 4. This act shall not apply to corporations making returns to the insurance commissioner under the provisions of section eleven of chapter one hundred fifteen of the Public Statutes.

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[1882, Chap. 218.]

### **An Act fixing the Payment of Costs in Appeals for Abatement of Taxes.**

Section seventy-one of chapter eleven of the Public Statutes is amended by adding at the end thereof the following words: "and may make such order relating to the payment of costs as justice may seem to require: *provided*, that taxable costs shall not be allowed to a party who has failed to file a list of his estate as required by law."

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[1882, Chap. 252.]

SECT. 5. The facts and returns relative to steam boilers required to be ascertained and made to the tax commissioner by section ninety-two of chapter eleven of the Public Statutes shall be ascertained and made in the city of Boston by the inspector of buildings and not by the assessors.

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[1883, Chap. 41.]

### **An Act in relation to the Assessment of Taxes.**

SECTION 1. Section fifty-two of chapter eleven of the Public Statutes is amended so that in the blank books provided for under said section, the heading of column number one shall read as follows: "Names and residences of persons assessed."

SECT. 2. Section fifty-three of chapter eleven of the Public Statutes is amended so that the second paragraph of said section shall read as follows: "In Column Number One. The names of the inhabitants or persons assessed for polls or estates, with the street and number of their residences."

[1883, Chap. 91.]

**An Act relating to the Duties of Assessors of Taxes.**

SECTION 1. The returns and copies of assessors' books, required by sections fifty-four and fifty-five of chapter eleven of the Public Statutes, to be deposited by the assessors in the office of the secretary of the Commonwealth, shall hereafter be deposited as follows: Copies of the assessors' books shall be deposited as required on or before the first day of October in the year eighteen hundred and eighty-three and in every third year thereafter; and in such years the secretary of the Commonwealth shall furnish to the cities and towns duplicate copies of the blank books required for this purpose. And the other returns specified in said sections shall be so deposited on or before the first day of October in each year: *provided*, that in the case of the city of Boston all said returns may be deposited in the office of the secretary on or before the first day of November in the several years respectively.

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[1884, Chap. 176.]

**An Act to exempt certain Property of Horticultural Societies from Taxation.**

SECTION 1. Such portions of real estate and buildings belonging to incorporated horticultural societies as are used for their offices, libraries and exhibitions, shall be exempt from taxation.

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[1885, Chap. 67.]

**An Act to provide for the Abatement of Dues or Taxes for School Books.**

SECTION 1. When a collector of taxes of a city or town is satisfied that any sum heretofore added to the annual tax of any parent, master or guardian, as or for the costs of books furnished under the provisions of section thirty-seven of chapter forty-four of the Public Statutes, cannot be collected for any of the reasons set forth in section seventy-seven of chapter eleven of said statutes he may make such statements, and the assessors may make such abatements, as are provided for in said section of chapter eleven, and the certificate of the assessors abating such tax or any part thereof, shall discharge the collector from further obligation to collect the same.

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[1885, Chap. 106.]

**An Act to require Assessors to enumerate and return the Number of Neat Cattle and Swine assessed.**

SECTION 1. Section fifty-four of chapter eleven of the Public Statutes is hereby amended by inserting at the end of the fourteenth clause of said section the following additional clauses:—

Fifteenth, The total number of neat cattle, other than cows, assessed.

Sixteenth, The total number of swine assessed.

SECT. 2. The clauses of said section now numbered "Fifteenth" and "Sixteenth," shall hereafter be numbered Seventeenth and Eighteenth, respectively.

[1885, Chap. 169.]

**An Act exempting from Taxation the Property of certain Persons though owned by such Persons jointly with Others.**

SECTION 1. The tenth clause of section five of chapter eleven of the Public Statutes is hereby amended so as to read as follows:—

*Tenth*, The property, to the amount of five hundred dollars, of a widow or unmarried woman above the age of twenty-one years, of any person above the age of seventy-five years, and of any minor whose father is deceased, whether such property be owned by such person separately, or jointly or as tenant in common with another or others: *provided*, that the whole estate real and personal of such person does not exceed in value the sum of one thousand dollars exclusive of property otherwise exempted under the provisions of this section: *and provided, further*, that no property shall be so exempted which in the judgment of the assessors has been conveyed to such person for the purpose of evading taxation. A person aggrieved by such judgment may appeal to the county commissioners within the time and in the manner allowed by law for an appeal in respect of the abatement of taxes.

[1885, Chap. 312.]

**An Act to limit Municipal Debt of and the Rate of Taxation in Cities.**

SECTION 1. The taxes assessed on property in any city, except the city of Boston, exclusive of state tax, county

tax and sums required by law to be raised on account of the city debt, shall not exceed in any year twelve dollars on every one thousand dollars of the average of the assessors' valuations of the taxable property therein for the preceding three years, the valuation for each year being first reduced by the amount of all abatements allowed thereon previous to the thirty-first day of December in the year preceding said assessment, and any order or appropriation requiring a larger assessment than is herein limited shall be void.

SECT. 2. The limit of indebtedness of cities shall hereafter be two and one-half per cent. on the average valuation prescribed in section one of this act, instead of three per cent. on the last preceding valuation as provided in section four of chapter twenty-nine of the Public Statutes. The cities of Worcester, Lynn, Gloucester and Brockton are exempted from the operation of sections one and two until the first day of January in the year one thousand eight hundred and eighty-nine.

SECT. 3. When an ordinance, order, resolution or vote of a city council, or of either branch thereof, involving the appropriation or expenditure of money, or the raising of a tax, and including several items or sums, is presented to the mayor of a city for his approval, he may approve some of the items or sums, and disapprove others; and in case of such disapproval the portion of the ordinance, order, resolution or vote so approved shall be in force, in like manner as if the items or sums disapproved had never been a part thereof; and the mayor shall return a statement of the items or sums disapproved, with his objections in writing, to that branch of the city council in which the ordinance, order, resolution or vote originated. The items or sums so disapproved shall not be in force unless passed by the city council, or by that branch thereof by which the ordinance, order, resolution or vote was passed, if passed by one branch only, in the manner provided in section six, chapter twenty-eight of the Public Statutes.

SECT. 4. Section six of chapter twenty-nine of the Public Statutes is amended by striking out the words "and of the year next ensuing" in the third line, so as to read as follows:—*Section 6.* Cities and towns may, by ordinary vote, incur debts for temporary loans in anticipation of the taxes of the year in which such debts are

incurred and expressly made payable therefrom by vote of the city or town.

SECT. 5. A court of justice having equity jurisdiction, sitting in any county, shall, upon the application of the mayor, or of ten taxable inhabitants of any city, at all times, whether in term time or vacation, have power to issue injunctions, mandatory or otherwise, decrees or other process, against the city council or otherwise, which such court or justice may think needful to enforce the provisions of this act, or to prevent the violation thereof.

[Additional acts relating to cities : 1886, ch. 178, 254, 304; 1887, 312; 1888, 73, 144, 185, 229, 392; 1889, 68, 157, 172, 176, 372; 1890, 120, 121, 135, 142, 203, 258, 271, 444; 1891, 150, 221, 230, 301, 316, 324; 1892, 42, 45, 150, 153, 155; 1893, 247, 445.]

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[1885, Chap. 355.]

**An Act to secure a fair and equal Valuation throughout the Commonwealth of Property subject to Taxation.**

SECTION 1. [Section one hundred and two of chapter twenty-seven of the Public Statutes is hereby amended so as to read as follows : — *Section 102.* Every assessor, assistant assessor, or other person chosen to assess taxes or determine or assist in determining the value of property for the purpose of taxation shall before entering upon the duties of his office take an oath which shall be in substance as follows : — I, having been chosen to assess taxes and estimate the value of property for the purpose of taxation for the town [or city] of \_\_\_\_\_, for the year, [or years] ensuing, do swear that I will truly and impartially, according to my best skill and judgment, assess and apportion all such taxes as I may during that time assess, that I will neither overvalue nor undervalue any property subject to taxation, and that I will faithfully discharge all the duties of said office. This section is superseded by Stat. 1893, ch. 423, § 10.]

SECT. 2. Every assessor, assistant assessor, or other person chosen to assess taxes or determine or assist in determining the value of property for the purpose of taxation, who having notice of his election neglects to take the oath prescribed by the preceding section before entering upon the duties of such office, shall be liable to the penalty provided in section one hundred and four of chapter twenty-seven of the Public Statutes.

SECT. 3. Every assessor of any city or town, or other person chosen to determine the valuation of property for the purpose of taxation who shall knowingly fix any such valuation of any property at a less sum than its full and

fair cash value in order that the tax-payers of such city or town may escape payment of their just proportion of any state or county tax, or for any other fraudulent or corrupt purpose, or who shall knowingly fix the valuation of any such property at a higher sum than its full and fair cash value for the purpose of evading or aiding in the evasion of any law, which, at the time such valuation is made, is in force limiting municipal indebtedness, or the rate of taxation, to a percentage of valuation, or for any other fraudulent, corrupt, or malicious purpose, shall be punished by a fine not exceeding one thousand dollars, or by imprisonment not exceeding six months, or by both such fine and imprisonment.

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[1886, Chap. 56.]

**An Act in relation to the Returns of Assessors.**

SECTION 1. Section fifty-four of chapter eleven of the Public Statutes is hereby amended by adding at the end of the fourth clause the following words :—specifying the value of buildings exclusive of land and of land exclusive of buildings,— and by adding at the close of said section the following clauses :—

Nineteenth, The total number of tax-payers.

Twentieth, The number of persons paying a tax on property.

Twenty-first, The number of persons paying a poll tax only.

SECT. 2. The blank forms of the tables of aggregates provided for by section fifty-two of said chapter shall be so changed as to include the items provided for by the foregoing section.

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[1886, Chap. 85.]

**An Act giving additional Time for the Assessment of Taxes in certain Cases.**

Section seventy-eight of chapter eleven of the Public Statutes is hereby amended by inserting after the word "town" in the first line, the words :—after their rate of taxation has been declared and whether before or,—and by inserting in the place of the word "September" in the eleventh line the word :—December,—so that said section as amended shall read as follows :—*Section 78.*

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When the assessors of any city or town after their rate of taxation has been declared and whether before or after their warrant has been committed to the collector, discover that the real or personal estate of any person, to an amount not less than one hundred dollars and liable to taxation, has been omitted from the last annual assessment of taxes in such city or town, said assessors shall proceed forthwith to assess such person for such estate in like manner as he should have been assessed in such last annual assessment. The taxes so assessed shall be entered in the tax list of the collector of the city or town, and he shall collect and pay over the same in the manner specified in his warrant: *provided*, that such tax shall not be assessed after the fifteenth day of December. No tax shall be invalidated for the reason that, in consequence of the provisions of this section, the whole amount of the taxes assessed in a city or town exceed the amount authorized by law to be raised.

[See Stat. 1888, ch. 362, for an amendment of this act.]

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[1886, Chap. 231.]

**An Act in relation to the Exemption of the Property of certain Literary and other Associations from Taxation.**

Section five of chapter eleven of the Public Statutes is hereby amended in the third division by adding after the word "institutions" in the second line thereof, the words:—and temperance societies,—and by adding after the word "institutions" in the third line thereof, the words:—and societies.

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[1887, Chap. 125.]

**An Act in Relation to the Assessment of Taxes on Royalty-paying Machines.**

SECTION 1. Chapter eleven of the Public Statutes is hereby amended by adding at the end of section twenty, as amended by chapter one hundred and sixty-five of the acts of the year one thousand eight hundred and eighty-two, the following clause:—

*Tenth*, All machines employed in any branch of manufactures and used or operated under a stipulation providing for the payment of a royalty or compensation in the

nature of a royalty for the privilege of using or operating the same, shall be assessed where such machines are situated or employed to the owner or any person, firm or corporation in possession of the same on the first day of May.

SECT. 2. This act shall take effect upon its passage.

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[1887, Chap. 226.]

**An Act relating to the Overlay of Taxes.**

SECTION 1. Section forty-nine of chapter eleven of the Public Statutes is amended so that it shall read as follows:— *Section 49.* They may, for the purpose of avoiding fractional divisions of the amount to be assessed in the apportionment thereof, add to that amount a sum not exceeding five per cent. thereof. And this overlay is authorized notwithstanding the limit of taxation now provided by law may, by such overlay, be exceeded.

SECT. 2. This act shall take effect upon its passage.

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[1887, Chap. 228.]

**An Act exempting Corporations whose Franchise is subject to Taxation from Taxation of their Shares.**

SECTION 1. Chapter eleven of the Public Statutes is hereby amended in the fourth section by adding thereto the following words:— and this proviso shall apply to corporations mentioned in the forty-sixth section of said chapter thirteen,— so that the last clause of said section four shall be as follows:— *provided*, that no taxes shall be assessed in any city or town for state, county or town purposes upon the shares in the capital stock of any corporation organized or chartered in the Commonwealth paying a tax on its corporate franchises under the provisions of chapter thirteen for any year in which it pays such tax, but such shares shall be taxable to the owners thereof for school district and parish purposes, and this proviso shall apply to corporations mentioned in the forty-sixth section of said chapter thirteen.

SECT. 2. This act shall take effect upon its passage.

[1887, Chap. 378.]

**An Act extending the Provisions of the Public Statutes relating to the Taxable Valuation of Vessels engaged in the Foreign Carrying Trade.**

SECTION 1. The provisions of section ten of chapter eleven of the Public Statutes are hereby renewed and extended for the term of two years.

SECT. 2. This act shall take effect upon its passage.

[And for two years more, Stat. 1889, ch. 286, and for five years more, 1893, ch. 149.]

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[1888, Chap. 158.]

**An Act in Relation to the Exemption of the Property of Certain Literary and other Associations from Taxation.**

SECTION 1. The third paragraph of section five of chapter eleven of the Public Statutes as amended by chapter two hundred and thirty-one of the acts of the year eighteen hundred and eighty-six is hereby further amended so as to read as follows:— Third, The personal property of literary, benevolent, charitable and scientific institutions and temperance societies incorporated within this Commonwealth, and the real estate belonging to such institutions and societies occupied by them or their officers for the purposes for which they were incorporated; but such real estate when purchased by such a corporation with a view to removal thereto, shall not, prior to such removal, be exempt for a longer period than two years; but none of the real or personal estate of such corporations organized under general laws shall be exempt when any portion of the income or profits of the business of such corporations is divided among their members or stockholders, or used or appropriated for other than literary, educational, benevolent, charitable, scientific or religious purposes.

SECT. 2. This act shall take effect upon its passage.

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[1888, Chap. 307.]

**An Act relative to the Right of the Public to examine the Lists of Valuation and Assessment of Cities and Towns.**

SECTION 1. Section fifty of chapter eleven of the Public Statutes is hereby amended so as to read as follows:—

**Section 50.** They shall make, upon the blank books furnished in accordance with section fifty-two, a list of the valuation and the assessment thereon, and before the taxes assessed are committed for collection, shall deposit the same, or an attested copy thereof, in their office, or if there is no office, with their chairman, for public inspection. The residents and non-resident property holders of each city or town shall, at all reasonable times have free access to its respective list of valuation and assessment and if the assessors refuse or neglect to submit the said list to the inspection of any of said residents or non-resident property holders upon request, each assessor so refusing or neglecting shall forfeit a sum not exceeding one hundred dollars in each case.

SECT. 2. This act shall take effect upon its passage.

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[1888, Chap. 315.]

**An Act to enable Tenants under Obligation to pay Taxes assessed on Real Estate to apply for an Abatement thereof.**

SECTION 1. Section sixty-nine of chapter eleven of the Public Statutes is hereby amended by adding thereto the following, to wit:— and tenants paying rent for real estate, and under obligation to pay the whole or a major part of the taxes assessed thereon, may so apply in behalf of the owner and with like effect as if the owner had applied, and no neglect of the owner to file a list of his estate shall prevent the making an abatement, if it appears that such abatement should be made.

SECT. 2. This act shall take effect upon its passage.

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[1888, Chap. 323.]

**An Act to amend Chapter Two Hundred and Seventeen of the Acts of the Year Eighteen Hundred and Eighty-two relating to Returns of Property held for Benevolent, Charitable or Scientific Purposes.**

SECTION 1. Section one of chapter two hundred and seventeen of the acts of the year eighteen hundred and eighty-two is hereby amended by adding at the end thereof the following:—*provided, also,* that instead of making such list and statement as of the first day of May, as above

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provided, any such corporation may at its option make such list and statement as of the last day of its financial year next preceding said first day of May.

SECT. 2. This act shall take effect upon its passage.

[1888, Chap. 362.]

### **An Act concerning the Assessment of Taxes in Certain Cases.**

SECTION 1. Section seventy-eight of chapter eleven of the Public Statutes as amended by chapter eighty-five of the acts of the year eighteen hundred and eighty-six is hereby further amended, to read as follows: — *Section 78.* When the assessors of any city or town after their rate of taxation has been declared and whether before or after their warrant has been committed to the collector, discover that the real or personal estate of any person, to an amount not less than one hundred dollars and liable to taxation, has been omitted from the last annual assessment of taxes in such city or town, said assessors shall between the fifteenth and twentieth days of December next ensuing, proceed to assess such person for such estate in like manner as he should have been assessed in such last annual assessment. The taxes so assessed shall be entered in the tax list of the collector of the city or town, and he shall collect and pay over the same in the manner specified in his warrant. No tax shall be invalidated for the reason that, in consequence of the provisions of this section, the whole amount of the taxes assessed in a city or town exceed the amount authorized by law to be raised.

SECT. 2. This act shall take effect upon its passage.

[1888, Chap. 363.]

### **An Act to amend Section Four of Chapter Eleven of the Public Statutes relating to the Taxation of Personal Estates.**

Section four of chapter eleven of the Public Statutes is hereby amended by inserting after the words “public stocks and securities,” in line eight thereof, the words: — bonds of all railroads including street railways, — so that the first eight lines of said section shall read as follows: —

*Section 4.* Personal estate shall, for the purposes of taxation, include goods, chattels, money, and effects, wherever they are, ships and vessels at home or abroad, except as provided in section eight, money at interest, and other debts due the persons to be taxed more than they are indebted or pay interest for, but not including in such debts due any loan on mortgage of real estate, taxable as real estate, except the excess of such loan above the assessed value of the mortgaged real estate, public stocks and securities, bonds of all railroads including street railways, stocks in turnpikes, — .

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[For ch. 390, "An Act to amend and codify the Statutes relating to the Collection of Taxes," see pp. 41-82.]

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[1889, Chap. 84.]

**An Act relating to the Ownership of Real Estate for the Purpose of Taxation.**

SECTION 1. Section thirteen of chapter eleven of the Public Statutes is hereby amended by inserting after the word "taxes" in the first line thereof the words: — on real estate, — and by striking out in the second line of said section the words "of record as owners of real estate" and inserting in place thereof the words: — in the records of the county where the real estate lies as the owners thereof on the first day of May, even if deceased, — so as to read as follows: — *Section 13.* For the purpose of assessing and collecting taxes on real estate the persons appearing in the records of the county where the real estate lies as the owners thereof on the first day of May, even if deceased, shall be held to be the true owners thereof. Taxes on real estate shall be assessed, in the city or town where the estate lies, to the person who is either the owner or in possession thereof on the first day of May. Mortgagors of real estate shall, for the purposes of taxation, except as provided in the three following sections, be deemed owners until the mortgagee takes possession, after which the mortgagee shall, except as provided in said sections, be deemed the owner.

SECT. 2. This act shall take effect upon its passage.

*Laws Regulating Taxation.*

[1889, Chap. 115.]

**An Act to amend Chapter Two Hundred and Eighty-three of the Acts of the Year Eighteen Hundred and Eighty-six relating to the Assessment of Taxes.**

SECTION 1. Section one of chapter two hundred and eighty-three of the acts of the year eighteen hundred and eighty-six is hereby amended by adding at the end thereof the following words : — The assessors of a city may in any year divide any ward in such city into convenient assessment districts.

SECT. 2. This act shall take effect upon its passage.

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[1889, Chap. 253.]

**An Act relating to the Payment of County Taxes.**

The respective sums apportioned to, and assessed upon, the several cities and towns of the Commonwealth for county taxes, shall be collected and paid into their respective city and town treasuries, in like manner as the state tax is now collected and paid ; and the county commissioners in their warrants shall require the selectmen or assessors of such cities and towns to pay, or issue severally their warrant or warrants requiring the treasurers of their respective cities and towns to pay, to the treasurers of their several counties the sums apportioned to said cities and towns, as aforesaid, at such times as shall be fixed and prescribed by said county commissioners of the several counties in their said warrants.

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[1889, Chap. 334.]

**An Act to amend Chapter Three Hundred and Ninety of the Acts of the Year Eighteen Hundred and Eighty-eight relating to the Collection of Taxes.**

SECTION 1. Section two of chapter three hundred and ninety of the acts of the year eighteen hundred and eighty-eight is hereby repealed, and the following substituted therefor : — *Section 2.* The collector shall, as soon as possible after receiving any tax list and warrant, send a notice to each person assessed, resident and non-resident, of the amount of his tax ; and such notice, if sent through the mail, shall be postpaid and directed to the city or town which was the place of residence of such person on the

first day of May of the year in which the tax was assessed, and if sent to a resident of the city in which the tax is assessed, shall be directed to the street and number of his residence, if possible. If the person is assessed for a poll tax only, the notice shall be sent on or before the second day of September of the year in which the tax is assessed. An omission to send the notice herein required shall not invalidate a tax or proceedings for the collection or enforcement of the same.

SECT. 2. Section three of chapter three hundred and ninety of the acts of the year eighteen hundred and eighty-eight is amended to read as follows:—*Section 3.* Every collector shall make and keep, in the book committed to him by the assessors containing the tax list, against the name of every person or corporation assessed for a tax, entries showing the disposition thereof, whether re-assessed, abated, or paid, and the date of such disposition.

SECT. 3. Sections twenty-nine and forty-one of chapter three hundred and ninety of the acts of the year eighteen hundred and eighty-eight are repealed; and section seven of said chapter is amended to read as follows:—*Section 7.* The collector shall, unless removed from office, as hereinafter provided, or unless his tax list has been transferred to his successor, as provided by law, complete the collection of taxes committed to him, although his term of office expires before such completion. He shall be allowed the following charges and fees, and no other, which shall be severally added to the amount of the tax after they have accrued, to wit:—

[For a summons, twenty cents, 1890, ch. 331.]

For arrest by collector or other officer, one dollar.

For a warrant to distrain or arrest, fifty cents.

For a copy of warrant and certificate (section fifteen), one dollar.

For preparing advertisement of sale, fifty cents.

For advertisement of sale in newspapers, the cost thereof.

For posting notices of sale (for each piece of real estate or lot of goods distrained), fifty cents.

For distraining goods, one dollar and the cost thereof.

For selling goods distrained, the cost thereof.

For obtaining affidavit of disinterested person, one dollar.

For recording affidavit, the register's fees.

For preparing deed, one dollar. [Two dollars, 1890, ch. 331.]

SECT. 4. Section eight of chapter three hundred and ninety of the acts of the year eighteen hundred and eighty-eight is amended to read as follows:—*Section 8.* Collectors shall, before selling the real estate of a resident owner, or distraining the goods of any person assessed, or arresting him for his tax, make a demand for the payment thereof, either by causing to be given, or to be sent postpaid through the mail, directed as provided for the direction of notices in section two of this act, to the person assessed for a tax, or if the heirs of a deceased person, or a firm or more than one person are assessed, then to one of such heirs, or members of a firm, or owners only, a statement of the amount thereof, with a demand for its payment. Such demand for the tax on real estate shall be given, or be sent directed as hereinbefore provided, to the person or one of the persons as aforesaid, if a resident of the city or town, or to the person occupying the real estate on the first day of May of the year in which the tax is assessed; if a mortgagee of real estate has given a notice as provided in section thirty-two, such demand shall be given, or be sent directed as hereinbefore provided, to the mortgagee instead of to the owner or occupant; if a mortgagee or owner of real estate has given an authority to a resident attorney to pay the tax with notice thereof, as provided in section thirty-three, the demand shall be given, or be sent directed as hereinbefore provided, to such attorney instead of to a mortgagee, owner or occupant. No demand need be made of a non-resident owner of real estate, nor, except as herein provided, need any demand be made of a mortgagee or of an attorney.

SECT. 5. Section nineteen of chapter three hundred and ninety of the acts of the year eighteen hundred and eighty-eight is amended to read as follows:—*Section 19.* When the collector commits a person to prison he shall give the keeper thereof a certificate signed by him, setting forth that he has committed the person for non-payment of his tax, for fourteen days after demand therefor, and for want of goods and chattels whereof to make distress, and also setting forth the amount said person is to pay for said tax and interest, and charges and fees.

SECT. 6. Section twenty-three of chapter three hundred and ninety of the acts of the year eighteen hundred

and eighty-eight is amended to read as follows:— *Section 23.* When a tax assessed upon a person remains unpaid for fourteen days after demand therefor, the collector may issue his warrant to the sheriffs of the several counties, or their deputies, or to any constable of, or deputy collector of taxes for, the city or town for which he is the collector, directing them and each of them to distrain the property or take the body of the person assessed for the tax, and to proceed therein in like manner as required of collectors in like cases. The warrant shall run throughout the state, and any officer to whom it is directed may serve it, and apprehend the person in any county.

SECT. 7. Section twenty-four of chapter three hundred and ninety of the acts of the year eighteen hundred and eighty-eight is amended to read as follows:— *Section 24.* When a tax assessed, or re-assessed, upon a person either for real or personal estate, or both, remains unpaid for three months after it is committed to the collector, the collector may, in his own name, sue or otherwise proceed in court against the person assessed, to collect the tax, in like manner as to collect a debt due him from such person.

SECT. 8. Section twenty-eight of chapter three hundred and ninety of the acts of the year eighteen hundred and eighty-eight, requiring a summons and providing for a charge to be made therefor, is repealed. [Re-enacted by Stat. 1890, Ch. 423, Sect. 1.]

SECT. 9. Section thirty of chapter three hundred and ninety of the acts of the year eighteen hundred and eighty-eight is amended to read as follows:— *Section 30.* Taxes assessed on real estate, including taxes assessed under sections fourteen, fifteen and sixteen of chapter eleven of the Public Statutes, shall constitute a lien thereon from the first day of May until the expiration of two years from the first day of October of the year in which said taxes are assessed. If such tax remains unpaid for fourteen days after demand therefor, it may with all incidental charges and fees be levied by sale of the real estate within said two years, or after the expiration of said two years, if the estate has not been alienated prior to the giving of the notice of such sale.

SECT. 10. Section thirty-two of chapter three hundred and ninety of the acts of the year eighteen hundred and eighty-eight is amended to read as follows:— *Sec-*

*tion 32.* If a mortgagee of real estate, situated in the place of his residence, previously to the first day of September of the year in which the tax is assessed, gives written notice to the collector of such place that he holds a mortgage on real estate with a description of the estate, the demand of payment for the tax shall be made of the mortgagee instead of the owner.

SECT. 11. Section thirty-three of chapter three hundred and ninety of the acts of the year eighteen hundred and eighty-eight is amended to read as follows:—*Section 33.* If a mortgagee or owner of real estate gives a written authority to some inhabitant of the place, as his attorney, to pay the taxes imposed on such estate, and likewise gives to the collector previously to the first day of September of the year in which a tax is assessed, written notice that such authority has been given, the demand of payment for the tax shall be made of such attorney, instead of the owner, and instead of the mortgagee, as provided in section thirty-two.

SECT. 12. Section thirty-seven of chapter three hundred and ninety of the acts of the year eighteen hundred and eighty-eight is amended to read as follows:—*Section 37.* The collector shall, three weeks before the sale, post a notice, similar to that required by the two preceding sections, on the premises by him advertised to be sold, if any part thereof is bounded by a street, lane, court or highway.

SECT. 13. Section forty-nine of chapter three hundred and ninety of the acts of the year eighteen hundred and eighty-eight is amended to read as follows:—*Section 49.* If after the sale of real estate for the payment of taxes a purchaser thereof fails to pay the collector within twenty days the full sum offered by him and to receive his deed, the sale shall be null and void, and the city or town shall be deemed to be the purchaser of the estate, according to the provisions of the preceding section.

SECT. 14. Section fifty-one of chapter three hundred and ninety of the acts of the year eighteen hundred and eighty-eight is amended to read as follows:—*Section 51.* Deeds to a city shall be placed in the custody of its collector, and to a town shall be placed in the custody of its treasurer, and to said collector or treasurer all applications for the redemption of the estates described in said deeds shall be made. And the several cities and towns

may, as holders of such estates, exercise the same rights and perform the same duties as any individual purchaser of real estate taken for taxes, and may make regulations for the custody, management and sale of such estates, and for the assignment of the tax titles thus obtained, not inconsistent with law or with the right to redeem the same.

SECT. 15. Sections sixty-nine and seventy-two of chapter three hundred and ninety of the acts of the year eighteen hundred and eighty-eight are amended by striking out the words "with the approval of the assessors," wherever they occur in each of said sections.

SECT. 16. Forms "No. 5," "No. 6," and "No. 7," in the schedule of forms at the end of said chapter three hundred and ninety, are stricken out and the following inserted in place thereof:—

**No. 5.—FORM OF CERTIFICATE REQUIRED BY SECTION 19 TO BE GIVEN BY A COLLECTOR WHEN A COMMITMENT IS MADE BY HIM.**

, 18 .

I hereby certify that the tax assessed in the                   of  
as of the first day of May in the year                   upon                   remains  
unpaid for fourteen days after demand therefor made by me; and  
that for want of goods and chattels whereof to make distress, I com-  
mit the said person to prison.

I also certify that the amount the said person is to pay for said tax  
and interest, and charges and fees, is                   dollars.

C D,

*Collector of Taxes for the                   of*

**No. 6.—FORM OF COLLECTOR'S WARRANT TO DISTRAIN OR COM-  
MIT UNDER SECTION 23.**

**COMMONWEALTH OF MASSACHUSETTS.**

*To the Sheriffs of our several Counties, or their Deputies, or to  
any Constable of or Deputy Collector of Taxes for the  
of                   in the County of*

**GREETING:**

WHEREAS,                   a resident of                   in the County  
of                   , was duly assessed as of the first day of May in the  
year eighteen hundred and                   , by the Assessors of the  
of                   a tax in the sum of                   dollars;  
and the same now, after the expiration of fourteen days from the  
date of a demand made upon him by me in accordance with law for  
the payment of the same, remains unpaid; Therefore,

In the name of the Commonwealth of Massachusetts, you and each  
of you, are required and directed to distrain the goods or chattels of  
the said person so assessed sufficient to satisfy and pay the amount

due for such tax and interest, and all fees and charges of keeping and selling the same, saving and excepting the tools or implements necessary for the trade or occupation of the said person so assessed, beasts of the plow necessary for the cultivation of his improved land; military arms; utensils for housekeeping necessary for upholding life; and bedding and apparel necessary for the said person so assessed and his family. And the goods and chattels so distrained by you, you are required to keep at the cost and charge of the owner, and within seven days after the seizure to sell the same at public auction, for the payment of the said amount due; having first posted up a notice of the sale in some public place in the town or city where found, forty-eight hours at least before the sale: *provided, however,* that you may, if you shall see fit, once adjourn said sale for a time not exceeding three days, in which case you shall forthwith post up a notice of such adjournment and of the time and place of sale. And if said distress shall be sold for more than the said amount due, you shall return the surplus to the owner of such goods or chattels upon demand, with an account in writing of the sale and charges. And if you cannot find sufficient goods and chattels belonging to the person assessed, whereon to make distress, you shall take the body of the said person and him commit to one of the common jails in the county in which you shall arrest him, there to remain until he shall pay said tax, and interest, and charges, and fees, or until he shall be discharged therefrom by due course of law.

And in case you shall commit said person so assessed to prison by virtue of this Warrant, you are required to give the keeper of the prison wherein he may be committed an attested copy of this Warrant, with a certificate thereon under your hand, setting forth that for want of goods and chattels of the said person whereof to make distress, you have taken his body and committed him to prison as aforesaid; and also setting forth the amount said person is to pay as his tax and interest, and fees and charges

Hereof fail not, and make return of this Warrant, with your doings thereon, within sixty days from the date hereof.

**NO. 7.—FORM OF CERTIFICATE REQUIRED BY SECTION 23 TO BE  
ENDORSED ON COPY OF WARRANT IN CASE OF COMMITMENT.**

, 18 .

I hereby certify that, by virtue of the warrant, of which the  
within is a true copy, for want of goods and chattels whereof  
to make distress, I have taken the body of the within named  
and committed him to prison, and that the  
amount which he is to pay as his tax and interest, and fees and  
charge is dollars.

*Deputy Collector of Taxes for the*

SECT. 17. The repeal or alteration by this act of any provisions of law shall not affect any act done, liability incurred or any right accrued and established or suit or

proceeding to enforce such right or liability under the authority of the laws hereby repealed or altered.

SECT. 18. This act shall take effect upon its passage.

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[1889, Chap. 348.]

**An Act in Addition to an Act to authorize the New York and New England Railroad Company to mortgage Certain of its Terminal Lands in the City of Boston, and in Relation to the Purchase of Such Lands from the Commonwealth.**

SECTION 1. Bonds issued by the New York and New England Railroad Company for the payment of which first mortgages made as provided in chapter three hundred and one of the acts of the year eighteen hundred and eighty-eight are held as collateral security, and also the mortgage notes so held as collateral security, shall, for the purposes of taxation, and for the purpose of exemption of deposits in savings banks and institutions for savings from taxation, be deemed to be a loan on mortgage of real estate, and taxable as real estate, as provided in chapter eleven of the Public Statutes, and not taxable otherwise.

SECT. 2. This act shall take effect upon its passage.

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[1889, Chap. 446.]

**An Act providing for the Taxation of Leased Properties in use in this Commonwealth.**

All personal property within the Commonwealth leased for profit shall be assessed for taxation in the city or town where such property is situated on the first day of May to the owner or the person having possession of the same.

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[1889, Chap. 465.]

**An Act in Relation to the Exemption of the Property of Certain Associations from Taxation.**

SECTION 1. The third division of section five of chapter eleven of the Public Statutes, as amended by chapter two hundred and thirty-one of the acts of the year eighteen hundred and eighty-six and chapter one hundred and fifty-eight of the acts of the year eighteen hundred and eighty-eight, is hereby further amended so as to read

as follows:— Third, The personal property of literary, benevolent, charitable and scientific institutions and temperance societies incorporated within this Commonwealth, and the real estate belonging to such institutions occupied by them or their officers for the purposes for which they were incorporated; but such real estate when purchased by such a corporation with a view to removal thereto, shall not, prior to such removal, be exempt for a longer period than two years; but none of the real or personal estate of such corporations organized under general laws shall be exempt when any portion of the income or profits of the business of such corporations is divided among their members or stockholders or used or appropriated for other than literary, educational, benevolent, charitable, scientific or religious purposes. The personal property and real estate belonging to grand army and veteran associations incorporated within this Commonwealth for the purpose of owning property for the use and occupation by posts of the grand army of the republic shall, to the extent of twenty thousand dollars, if the same shall be in actual use and occupation by such associations, be deemed to be the property of charitable institutions, and exempt from taxation, provided the net income from said property is used for charitable purposes in aid of needy soldiers of the war of the rebellion, and their dependents.

SECT. 2. This act shall take effect upon its passage.

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[1889, Chap. 467.]

**An Act in Relation to the Division of Poll Tax Bills.**

SECTION 1. Section sixty-one of chapter eleven of the Public Statutes is hereby amended by inserting after the word “collectors” in the first line thereof the following words:— shall contain a certificate signed by the assessors, which shall state what portion of the amount assessed upon each poll is assessed as state tax and county tax respectively; and, — so that the first part of said section shall read as follows:— The tax list committed to the collectors shall contain a certificate signed by the assessors, which shall state what portion of the amount assessed upon each poll is assessed as state tax and county tax respectively, and shall be, in substance, as follows:— .

SECT. 2. Section ninety-three of said chapter eleven is hereby amended by adding at the end thereof the following words: — *provided*, that the tax bills of male persons who are assessed for poll taxes only shall state the apportionment of such taxes between state and county assessments, and such persons shall not be entitled to have the certificate provided for by this section, but the collector shall receipt on said bills for such taxes, separately, or together as the payment may be, and shall thereupon deliver such bills.

SECT. 3. Section one of chapter two hundred and twenty-five of the acts of the year one thousand eight hundred and eighty is hereby amended by adding at the end thereof the following words: — except as provided by an act entitled "An Act in relation to the division of poll tax bills," of the acts of the year eighteen hundred and eighty-nine.

SECT. 4. This act shall take effect upon its passage.

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[1890, Chap. 127.]

**An Act to authorize Appeals from Assessors of Taxes to the Superior Court.**

SECTION 1. Any person entitled to make a complaint to the county commissioners, or to any board exercising any of the powers of county commissioners, for an abatement of his taxes may, if he so elect, appeal under the same terms and conditions from the decision of the assessors to the superior court for the county in which the city or town, in which the property of such person is assessed, is situated.

SECT. 2. Such appeal shall be entered in the office of the clerk of said court at the return day first occurring not less than thirty days after the assessors have given to the appellant notice in writing of their decision upon his application for such abatement, and shall be tried, heard and determined by the court without a jury in the manner and with the rights provided by law in other civil cases so heard.

SECT. 3. If upon such trial it appears that the appellant has complied with all the provisions of law, and has paid the taxes for which he has been assessed, he may be

granted such abatement as said court may deem reasonable, under the same circumstances as an abatement may now be granted in like cases by the county commissioners, and judgment for the amount thereof shall be rendered against such city or town; and the court may make such order relating to the payment of costs as justice may seem to require; but no costs shall be allowed to an appellant who has failed to file a list of his estate as required by law; if no abatement is granted judgment shall be rendered in favor of the city or town for its expenses and costs, to be taxed by the court.

SECT. 4. Such appeal shall be tried at the first trial term of said court for civil cases, unless delay shall be granted at the request of such city or town for good cause; and said court, and the supreme judicial court upon any appeal from any decision in any such case, shall, if requested by such city or town, advance the case upon the docket so that it may be tried and decided with as little delay as possible. Either party may file exceptions to the decisions and rulings of the court upon matters of law arising upon the trial, in the same manner and with the same effect as is allowed in the superior court in the trial of cases without a jury.

SECT. 5. The court may in its discretion appoint a commissioner to hear the parties and to report to the court the facts, or the facts with the evidence. Such report shall be *prima facie* evidence of the facts thereby found. The fees of the commissioner shall be paid in the same manner as those of auditors appointed by the court.

SECT. 6. The assessors shall give to any person applying to them for an abatement of taxes notice in writing of their decision upon such application within ten days after they take final action thereon.

SECT. 7. The tax commissioner of the Commonwealth may at his election order a corporation to prosecute an appeal from the valuation fixed upon its real estate and machinery by the assessors of a city or town, either to the county commissioners, as now provided by law, or to the superior court. In case an appeal to the superior court, under the provisions of this section, said court may make such order as to costs as justice may seem to require.

[1890, Chap. 242.]

**An Act in Relation to the Tables of Aggregates required to be made by Assessors of Taxes.**

SECTION 1. Section fifty-four of chapter eleven of the Public Statutes, as amended by chapter eighty-six of the acts of the year eighteen hundred and eighty-seven, is hereby further amended so as to read as follows: — *Section 54.* The assessors shall fill up the table of aggregates by an enumeration of the necessary items included in the lists of valuation and assessments required by law, and shall on or before the first day of October in each year deposit in the office of the secretary of the Commonwealth an attested copy of the same, containing, — First. The number of residents assessed on property, specifying the number of individuals and the number of firms, corporations, associations, institutions, trustees, and so forth. Second. The number of non-residents assessed on property, specifying the number of individuals and the number of firms, corporations, associations, institutions, trustees, and so forth. Third. The whole number of persons assessed, specifying the number assessed for a tax on property and the number assessed for a poll tax only. Fourth. The number of polls assessed, specifying the number of male polls and the number of female polls. Fifth. The tax on each poll, male or female. Sixth. The value of personal estate assessed, specifying the value of the same, excluding resident bank stock, and the value of resident bank stock. Seventh. The value of real estate assessed, specifying the value of buildings exclusive of land and of land exclusive of buildings. Eighth. The total valuation of assessed estate in the city or town. Ninth. The tax for state, county and city or town purposes, including overlayings, specifying the amount assessed on personal estate, on real estate and on polls. Tenth. The rate of total tax per one thousand dollars. Eleventh. The number of horses assessed. Twelfth. The number of cows assessed. Thirteenth. The number of sheep assessed. Fourteenth. The number of neat cattle, other than cows, assessed. Fifteenth. The number of swine assessed. Sixteenth. The number of dwelling-houses assessed. Seventeenth. The number of acres of land assessed: *provided*, that in the case of the city

of Boston said copy may be deposited in the office of the secretary on or before the first day of November in each year.

SECT. 2. The blank forms of the tables of aggregates provided for by section fifty-two of chapter eleven of the Public Statutes shall be so changed as to include the items for which provision is made in the foregoing section.

SECT. 3. This act shall take effect upon its passage.

[1890, Chap. 331.]

**An Act in relation to the Collection of Taxes and the Fee for preparing a Tax Deed.**

SECTION 1. When a tax is due from any person the collector of taxes may, before making a demand for the payment thereof as required by law, mail post paid or cause to be delivered a summons to such person, stating therein the amount due and that unless the same is paid within ten days, with twenty cents for the summons, the collector will proceed to collect the same according to law.

SECT. 2. Section three of chapter three hundred and thirty-four of the acts of the year eighteen hundred and eighty-nine is hereby amended by adding after the words "to wit," in the twelfth line, the words:—For a summons, twenty cents,—and by striking out the words "For preparing deed, one dollar," in the last line of said section, and substituting therefor the words:—For preparing deed, two dollars,—so that said section as amended shall read as follows:—*Section 3.* Sections twenty-nine and forty-one of chapter three hundred and ninety of the acts of the year eighteen hundred and eighty-eight are repealed; and section seven of said chapter is amended to read as follows:—*Section 7.* The collector shall, unless removed from office, as hereinafter provided, or unless his tax list has been transferred to his successor, as provided by law, complete the collection of taxes committed to him, although his term of office expires before such completion. He shall be allowed the following charges and fees, and no other, which shall be severally added to the amount of the tax after they have accrued, to wit:—For a summons, twenty cents. For

arrest by collector or other officer, one dollar. For a warrant to distrain or arrest, fifty cents. For a copy of warrant and certificate (section fifteen), one dollar. For preparing advertisement of sale, fifty cents. For advertisement of sale in newspapers, the cost thereof. For posting notices of sale (for each piece of real estate or lot of goods distrained), fifty cents. For distraining goods, one dollar and the cost thereof. For selling goods distrained, the cost thereof. For obtaining affidavit of disinterested person, one dollar. For recording affidavit, the register's fees. For preparing deed, two dollars.

SECT. 3. This act shall take effect upon its passage.

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[1891, Chap. 65.]

**An Act requiring Assessors of Cities and Towns to make Returns to the Secretary of the Commonwealth of the Number and Value of Fowl assessed.**

SECTION 1. Assessors of cities and towns shall include in their returns to the secretary of the Commonwealth, as required by section fifty-four of chapter eleven of the Public Statutes, the total number and value of fowl assessed.

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[1891, Chap. 288.]

**An Act to prevent Excessive Charges in the Redemption of Tax Titles.**

Whoever knowingly collects or attempts to collect for the redemption of an estate sold for payment of taxes a sum of money greater than that authorized in section fifty-seven of chapter three hundred and ninety of the acts of the year eighteen hundred and eighty-eight shall be punished by fine not exceeding one hundred dollars.

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[1891, Chap. 381.]

**An Act relating to the Administering of Oaths to Persons bringing in Lists of Property for Assessment.**

Section thirty-nine of chapter eleven of the Public Statutes is hereby amended by striking out the word

"either," in the third line of said section, and inserting in place thereof the word:—one,—and by adding, at the end of the section, the words:—or by their secretary or head clerk, unless such person is absent from the city or town in which the tax is to be laid during the whole period when it may be made, in which case the oath may be administered by a notary public, the jurat to be duly authenticated by his seal,—so as to read as follows:—  
*Section 39.* The assessors shall in all cases require a person bringing in a list to make oath that the same is true; which oath may be administered by one of the assessors, or by their secretary or head clerk, unless such person is absent from the city or town in which the tax is to be laid during the whole period when it may be made, in which case the oath may be administered by a notary public, the jurat to be duly authenticated by his seal.

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[1892, Chap. 109.]

**An Act relative to the Taking of Land for Taxes so as to dispense with the Filing of Certain Papers connected with such Taking.**

SECTION 1. Section fifty-three of chapter three hundred and ninety of the acts of the year eighteen hundred eighty-eight is hereby amended by striking out, in the fifth line thereof, the words "filed and," so as to read as follows:—*Section 53.* The affidavit of the collector, deputy collector, or of a disinterested person, taken before a justice of the peace, of the service of the demand of payment, and of the notice, as provided in the preceding section, with copies thereof annexed, recorded in the registry of deeds of the county or district where the land lies, shall be competent evidence of such demand and notice.

SECT. 2. Section fifty-four of chapter three hundred and ninety of the acts of the year eighteen hundred and eighty-eight is hereby amended by striking out, in the eighth line thereof, the words "filed and," so as to read as follows:—*Section 54.* Said affidavits shall be annexed to the instrument of taking, which shall be under the hand and seal of the collector, and shall contain a statement of the cause of taking, a substantially accurate

description of each parcel of land taken, the name of the person to whom the same was assessed, and the amount of the tax thereon and of the incidental costs and expenses to the date of taking, and shall be recorded in the registry of deeds of the county or district where the land lies; and the title to the lands so taken shall thereupon vest in the city or town, subject to the right of redemption given by section fifty-seven.

SECT. 3. This act shall take effect upon its passage.

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[1892, Chap. 168.]

**An Act relating to the Service of Process in the Collection of Taxes.**

SECTION 1. Any notice, summons, demand or other paper which the collector of taxes is by law required to serve, may be served by leaving the same at the last and usual place of abode, or of business, of the person assessed, or by sending the same through the mail, postpaid and directed to the person assessed, at the city or town in which such person was registered as a voter for the last preceding state election. The affidavit of a collector or deputy collector, kept on file in the office of the collector of taxes, that he has served such notice, summons, demand or other paper in the manner described in such affidavit, shall be *prima facie* evidence that it was so served.

SECT. 2. This act shall take effect upon its passage.

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[1892, Chap. 370.]

**An Act in relation to the Accounts and Records of Collectors of Taxes.**

SECTION 1. Every collector of taxes who resigns his office, or is removed or retired from office, shall within three months after such resignation, removal or retirement, deposit all his accounts, records and papers relating to the assessment and collection of taxes in the city or town in which he held such office, excepting his warrant, with the clerk of such city or town.

SECT. 2. Every ex-collector of taxes shall, within three months after the passage of this act, deposit all the accounts, records and papers which are now in his posses-

sion relating to the assessment and collection of taxes in the city or town in which he held such office, excepting his warrant, with the clerk of said city or town.

SECT. 3. The executor or administrator of a deceased person who at the time of his death or previously thereto was a collector of taxes, shall, within three months after his acceptance of the office of administrator, deposit all the accounts, records and papers which came into his hands relating to the assessment and collection of taxes, with the clerk of such city or town.

SECT. 4. When all the taxes committed to the collector of taxes in any city or town have been paid or abated, or in any event at the end of three years from the date of the commitment to him of said taxes, he shall deposit all the accounts, records and papers relating to such taxes, with the clerk of the city or town in which he holds office.

SECT. 5. If the collector of taxes in any city or town has an office for the deposit of records and the transaction of the business of collector, the accounts, records and papers required to be deposited with the city or town clerk shall be deposited with the collector in said office.

SECT. 6. Any city or town clerk, or collector of taxes mentioned in section five of this act, who shall have knowledge of any accounts, records or papers relating to taxes in his city or town which, under the provisions of this act, should be in his possession, shall demand the same of any person having them in his possession.

SECT. 7. Any collector or ex-collector of taxes, or any executor or administrator mentioned in section three of this act, who refuses or neglects to perform any duty required by this chapter, or any person having in his possession any accounts, records or papers mentioned in section six of this act, who, after demand made by the clerk or collector entitled by law to have possession of the same, wrongfully detains them, shall forfeit a sum not exceeding five hundred dollars.

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[1893, Chap. 241.]

**An Act relating to Persons Imprisoned for Non-payment of a Poll Tax.**

SECTION 1. Section eighteen of chapter three hundred and ninety of the acts of the year eighteen hundred and

eighty-eight is hereby amended by adding thereto the following words:—But a person imprisoned for non-payment of a poll tax shall not be detained in prison more than twenty days,—so as to read as follows:—*Section 18.* If a person refuses or neglects for fourteen days after demand to pay his tax, and the collector cannot find sufficient goods upon which it may be levied, he may take the body of such person and commit him to prison, there to remain until he pays the tax and charges of commitment and imprisonment, or is discharged by order of law. But a person imprisoned for non-payment of a poll tax shall not be detained in prison more than twenty days.

SECT. 2. This act shall take effect upon its passage.

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[Extracts from Chap. 417, Acts of 1893.]

**2. ASSESSMENT OF POLL TAXES AND LISTS OF PERSONS ASSESSED.**

SECT. 16. The assessors by one or more of their number, or by one or more assistant assessors, shall, in the month of May or June in each year, visit every building in their respective cities and towns, and, after diligent inquiry, make true lists containing, as near as they can ascertain the same, the name, age, occupation and residence, on the first day of May in the current year, and the residence on the first day of May in the preceding year, of every male person twenty years of age or upwards, residing in their respective cities and towns, liable to be assessed for a poll tax; and shall receive the request of every woman twenty-one years of age or upwards, residing in their respective cities and towns on the first day of May in the current year, who, in a writing signed by her, requests that her name be transmitted to the registrars of voters for the purpose of registration.

The assessors shall, upon the personal application of an assessed person for the correction of any error in their original lists, and whenever informed of the existence of any such error, make due investigation, and, upon proof of error, correct the same on their books. They shall cause to be preserved for the space of two years all applications, certificates and affidavits received by them under this section.

SECT. 17. The assessors in each city and town shall promptly, from time to time, and before the fifteenth day

of July in each year, transmit to the registrars of voters the lists made as provided in the preceding section, or certified copies thereof, and shall promptly transmit to the registrars and to the collector of taxes notice of every addition to and correction in the lists made by them; they shall also promptly transmit to the registrars the requests of all women which shall have been received by them as aforesaid; and every assessor, assistant assessor and collector of taxes shall furnish all information in his possession necessary to aid the registrars in the discharge of their duties.

SECT. 18. The assessors of cities shall, on or before the fifteenth day of July in each year, and the assessors of towns having over five thousand inhabitants according to the last state or national census, as the case may be, shall, on or before the first day of August in each year, prepare street lists containing the names of all persons assessed by them for poll taxes for the current year, which lists shall, for cities and towns divided into voting precincts, be arranged by voting precincts. They shall print such lists in pamphlet form, shall deliver to the registrars as many copies thereof as the registrars may require, and shall hold the remainder of the copies for public distribution. In every town containing less than five thousand inhabitants according to such census, the assessors shall, on or before the first day of August in each year, cause printed or written lists of all persons assessed therein for poll taxes to be prepared and conspicuously posted in two or more public places in every such town.

SECT. 19. The assessors, in the preparation of street lists as above provided, shall name or designate all buildings used as residences, in the order in which they stand on the street or other way on which they are located, shall give the number or other definite description of each building, so that it can be readily identified, and shall place opposite or under each number or other description given of a building, the name, age and occupation of every person residing in such building on the first day of May of the current year and assessed for a poll tax, with his residence on the first day of May of the preceding year.

SECT. 20. If a male person, who has not been previously assessed for a poll tax for the year beginning with the preceding first day of May, shall, on or before the

day fixed by law for the close of registration in a city or town, appear in person and prove to the satisfaction of the assessors that he was on such preceding first day of May an inhabitant of such city or town, and liable to pay a poll tax therein, and shall under oath furnish a true list of his polls and of his estate, both real and personal, not exempt from taxation, the assessors shall thereupon assess him for his polls and estate, and shall give him a certificate of such assessment, which on presentation to the registrars of voters shall be taken by them as *prima facie* evidence of the facts therein stated.

SECT. 21. The assessors of a city or town, upon receipt from the registrars of voters of notice of the registration by them as a voter, of a person who was a resident of such city or town on the preceding first day of May, but who was not assessed therein for a poll tax, shall forthwith assess such person for his polls and estate, unless he is by law exempt from assessment.

SECT. 22. All assessments made in accordance with the preceding two sections shall be subject to the provisions of section seventy-three of chapter eleven of the Public Statutes, and shall be entered in the tax list of the collector of taxes of the city or town, and be collected by him according to law.

[Extracts from Stat. 1893, Chap. 423.]

#### SELECTMEN.

SECT. 6. The selectmen shall be assessors of taxes and overseers of the poor in towns which have not specially chosen other persons to those offices; and, when acting as assessors, the selectmen shall take the oath of office required of assessors.

SECT. 7. The selectmen may at any time appoint police officers with any or all of the powers of constables, except the power of serving and executing civil process. Such police officers shall hold office during the pleasure of the selectmen; and they may, when on duty, carry such weapons as the selectmen shall authorize.

SECT. 8. The selectmen, on the receipt and approval of the bond of a collector of taxes or treasurer, shall give notice of such receipt and approval to the assessors.

SECT. 9. A person elected a selectman who enters upon the duties of his office before taking the oath of

office, shall forfeit for each offence a sum not exceeding one hundred dollars.

#### ASSESSORS.

SECT. 10. Every assessor, assistant assessor and other person chosen to assess taxes, or to determine or assist in determining the value of property for the purpose of taxation, shall, before entering upon the duties of his office, take an oath which shall be in substance as follows: —

I, having been chosen to assess taxes and estimate the value of property for the purpose of taxation for the town (or city) of \_\_\_\_\_ for the year (or years) ensuing, do swear that I will truly and impartially, according to my best skill and judgment, assess and apportion all such taxes as I may during that time assess; that I will neither overvalue nor undervalue any property subject to taxation, and that I will faithfully discharge all the duties of said office.

Every assessor, assistant assessor and other person chosen to assess taxes, or to determine the value of property for the purposes of taxation, who having notice of his election neglects to take the oath above prescribed, before entering upon the duties of such office, shall forfeit a sum not exceeding fifty dollars.

SECT. 11. Assistant assessors of a town when chosen shall, in their respective districts, assist the assessors in making lists of persons liable to be assessed for poll taxes in such districts, in publishing and transmitting lists of persons so assessed, in estimating the value of the real and personal estate in such districts, and in the performance of such other duties as the assessors may require.

SECT. 16. If a town appoints its treasurer collector of taxes, the treasurer may appoint deputies, who shall give such bonds for the faithful discharge of their duties as the selectmen may think proper; and such collector and deputies shall have the same powers as are vested in collector of taxes. A treasurer so appointed collector may issue his warrant to the sheriff of the county or to his deputy, or any constable of the town, directing them to distrain the property or take the body of any person who is delinquent in the payment of taxes, and to proceed in the same manner as collectors are required to do in like cases.

COLLECTOR OF TAXES.

SECT. 17. If the person or persons appointed to collect taxes in a town refuse to serve, or if no person is elected or appointed a collector of taxes, the constables of the town shall be the collectors of taxes therein.

SECT. 18. Every collector of taxes shall give bond to the town in such sum as the selectmen may require, and with sureties to their satisfaction, for the faithful discharge of the duties of his office.

SECT. 19. A town may at a meeting notified for the purpose authorize its collector of taxes to use all means of collecting taxes which a town treasurer may use when appointed a collector of taxes.

## REFERENCES TO THE STATUTES REGULATING TAXATION BY THE LOCAL ASSESSORS.

**ALPHABETICALLY ARRANGED.**

**TOGETHER WITH NOTES OF SOME OF THE MORE  
IMPORTANT DECISIONS.**

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### ABATEMENTS.

[*Pub. Stats., ch. 11, §§ 69-77; Acts 1882, ch. 218; 1888, ch. 315; 1890, ch. 127.*]

Assessors cannot abate a tax after their term of office has expired. *Cheshire v. Howland*, 13 Gray, 321.

Taxes assessed in one year may be abated by the assessors of the succeeding year, if the applicant for abatement has complied with the laws as to the time and manner of his application. *Carleton v. Ashburnham*, 102 Mass. 348.

The list furnished by a land-owner to the assessors described his estate as consisting of three parcels, but gave the number of acres in one of them only. The assessors estimated the whole estate as containing sixty-five acres. On an application to the county commissioners for an abatement it was agreed that the estate in fact contained "about fifty-five acres, more or less." *Held*, that he was not thereby entitled to an abatement. *Pingree v. Berkshire*, 102 Mass. 76.

A person cannot have an abatement of tax before filing with the assessors the list required by the Public Statutes, ch. 11, § 72, although there is good cause why such a list was not seasonably brought in, and although he has offered to make out a schedule of his estate which the assessors have declined to receive, and has made before them an oral statement of his estate under oath.

The statute of 1865, ch. 121, now Pub. Stats., ch. 11, § 73, does not dispense with the filing of a sworn list as a necessary preliminary to the abatement of a tax, and the assessors cannot waive the filing of a list. *Charlestown v. County Commissioners*, 101 Mass. 87. *Win-nismmet Co. v. Chelsea*, 6 Cush. 477.

A person can have an abatement of his tax assessed upon property erroneously included by him in his sworn return. *Charlestown v. County Commissioners of Middlesex*, 109 Mass. 270.

The following case is important in several respects, especially in reference to the powers of county commissioners in cases of abatement, and also as to the effect of an error in the list of personal property handed to the assessors: —

SUPREME JUDICIAL COURT.

SEPTEMBER, 1873.

## GREAT BARRINGTON v. COUNTY COMMISSIONERS OF BERKSHIRE.

COLT, J. The "tax payer filed with the assessors a list subscribed by him of his estate liable to taxation," and made oath as required by statute. G. S., ch. 11, § 46. The assessors were not bound to receive the list as true, if he neglected to answer on oath the inquiries which were put to him; for the list is not conclusive as to property not embraced in it, which may be disclosed upon such inquiries. *Hall v. County Commissioners of Middlesex*, 10 Allen, 100. The list proved to be inaccurate by reason of the omission of some personal property, which was afterwards admitted to be taxable. But the right to an abatement is not defeated by mere inaccuracy in the list filed; for then one who was once taxed could have no relief if any one item had been omitted which was ultimately held taxable, however doubtful the question might have been originally although honestly omitted from a belief that it was not taxable. The condition imposed by the statute is merely that a list shall be filed with the signature and oath of the tax payer "that it is full and accurate according to his best knowledge and belief." Such a list made and filed in good faith entitles the party to be heard upon his application for an abatement.

The imperfect descriptions in the list, by reference to the lists of the previous year, might have justified the assessors in rejecting it at the time. But as it was received without objection made to these irregularities, and as they do not affect the questions arising upon the abatement asked, it is too late to make that objection for the first time after the complaint is made to the county commissioners.

The list was properly treated as a substantial compliance with the statute. It is not like *Winnisimmet Co. v. Chelsea*, 6 Cush. 477; for there was in that case an entire neglect to comply with the statute, while here its provisions were met with in all essential particulars. *Charlestown v. County Commissioners of Middlesex*, 101 Mass. 87.

It was found by the commissioners that there was no refusal on the part of the tax payer to answer under oath concerning the nature and amount of his property. But, if it had proved otherwise, there would have been no forfeiture involved in it of the right to an abatement of an illegal tax. G. S., ch. 11, § 25.

The commissioners had full jurisdiction of the petitioner's application for an abatement, and did abate so much of the tax as was assessed on his interest in sundry cargoes at sea.

Their action cannot be revised in this proceeding, if it was competent for them to find as a fact that these cargoes were not taxable as the property of the tax payer.

As a general rule the findings of the commissioners upon matters of fact will not be reviewed on *cetiorari*.

Where all the evidence is reported, the inquiry is, whether it will justify the finding as a legitimate inference, not whether the finding is against the weight of evidence. It is enough that there is some evidence to justify it. *Gibbs v. County Commissioners of Hampden*, 19 Pick. 298. *Nightingale, pet'r*, 11 Pick. 168. *Farnington River Water Power Co. v. County Commissioners*, 112 Mass. 206.

Upon the allegations in this petition and the facts stated in the answer, as found by them, we cannot say that the abatement of which the petitioners complain was not legally made upon evidence before them. Nor is it open to the petitioners now to controvert the facts

found, or change their effect by proving any of the other facts alleged by them. They have had day in a court of competent jurisdiction, and cannot reverse its decision except for error in law. Petition dismissed with costs. *Great Barrington v. County Commissioners of Berkshire*, 112 Mass. 218.

In Boston, if the assessors refuse to make an abatement, complaint is to be made to the street commissioners. Stat. 1870, ch. 387, § 2.

The statutes relating to abatements apply to corporations as well as individuals. *Otis Company v. Ware*, 8 Gray, 509. Upon a complaint to county commissioners for an abatement of taxes, any error or mistake in matter of law may be corrected by writ of *certiorari*. *Newburyport v. Essex Commissioners*, 12 Met. 211, 8 Cushing 61, 1 Allen, 199.

The following case has recently been decided in Suffolk County. The opinion of the court is given in full.

SUPREME JUDICIAL COURT.

JANUARY TERM, 1883.

**J. B. MOORS v. BOSTON.**

**DEVENS, J.** The petitioner who brings this proceeding for the purpose of revising the judgment of the street commissioners of Boston acting as county commissioners, in refusing to abate a tax laid by the assessors of Boston upon his property, had seasonably filed a schedule purporting to be a true list of all his property liable to taxation and had made oath to the same. Whether any inquiries were then made of him does not clearly appear, but it is agreed that if such were made they were fully answered. Subsequently the assessors learning of two lots of personal property, for which they considered him to be taxable (not referred to in any inquiries made by them if such were made) added a description of the same to the schedule filed by him, and assessed him thereon, no inquiries having been made by them in relation thereto. We have first to consider therefore, whether the sworn return was conclusive upon the assessors under these circumstances, and then whether they were limited to an assessment of the property returned by the petitioner. The chapter 7, section 22, Revised Statutes, was as follows: "The assessors shall receive as the true valuation of the property of each individual the list, if any, brought in by him according to the provisions of this chapter, unless he shall, on being thereto required by the assessors, refuse to make oath that the same is true." Under this statute it was held that the word valuation was equivalent to "enumeration" or "statement," and not to "estimate of value," that the value of his estate as estimated by the tax payer was not conclusive upon the assessors, but that the enumeration, description and specification of his estate was to be so taken unless the owner on being required to make oath, refused to do so. He could not therefore be lawfully taxed for more property than he had inserted in his list unless he refused to swear that he had any more. *Inhabitants of Newburyport v. County Commissioners*, 12 Met. 211. *Winnisimmet Company v. Chelsea*, 6 Cushing 477. *Lincoln v. Worcester*, 8 Cushing 55. The General Statutes so far altered the law as to provide, referring to the assessors (ch. 11, § 25): "They shall receive as true the list brought in by each individual, according to the provisions of this chapter, unless on being thereto required by the assessors he refuses to answer on oath all necessary inquiries as to the nature and amount of his property;" the word "valuation" was thus omitted, and while under the former statute it was held that the return of the

tax payer should be adopted as conclusive if upon being required so to do he made an oath to its correctness; under the latter statute the assessors were not bound to take his list as true if by his sworn answers to their inquiries it appeared to be otherwise. The purpose for which inquiries by the assessors were authorized was that they might thereby correct the list or disregard it, if it appeared by an examination of the party, that from a mistake, oversight or otherwise he had not sworn to a true list of his property. It was not conclusive as to property not included in it which might be disclosed by such inquiries. *Inhabitants of Newburyport v. County Commissioners.* 12 Met. 211. *Hall v. County Commissioners.* 10 Allen, 103. *Great Barrington v. County Commissioners,* 112 Mass. 218. A severe penalty was imposed by Stat. 1869, ch. 190 (Pub. Stats., ch. 11, § 29) on any one intentionally making a false return or schedule as and for a true list of his taxable property, and by this list the assessors are bound except as above stated. They cannot correct this list upon any information, however satisfactory as to the existence of other taxable property, which is not communicated to the tax payer. Having furnished them with his list, under oath, he is entitled, before he can be assessed upon other property, to have them hear his statements or explanations in regard to it. In *Charlestown v. Middlesex,* 109 Mass. 270, it was held that the list returned to the assessors was not conclusive on one who by mistake included therein property that was exempt by law, and that he might properly apply for an abatement of the tax thereon. The respondents argue that if such is the case and if property put into the list could be struck out, property which is omitted could be inserted therein. But the power of the assessors or commissioners to abate the tax when it is found that property for which the tax payer was not liable was included in the assessment and thus that he was taxed at more than his just proportion is not limited by the fact that it had been erroneously inserted in his list. On the other hand the assessors must take the list furnished them as true unless they make the examination they are entitled by law to make, give to the tax payer the opportunity intended to be afforded him by inquiry as to the nature and amount of property claimed to be subject to taxation and then determine that the list should be corrected by the insertion of property erroneously omitted. As the proceedings of the assessors were erroneous in imposing a tax upon property not included in the list of the petitioner, it is unnecessary to determine whether a tax could properly have been laid upon the merchandise which was the subject of it. *Certiorari* to issue. *Moors v. Boston,* 134 Mass. 481.

A non-resident, who is taxed as a resident on all his personal property, cannot maintain an action to recover back the amount of the tax paid by him under protest, if he had horses and cattle kept in the town assessing the tax, and liable to taxation there under Pub Stats., ch. 11, § 12, cl. 3. *Hicks v. Westport,* 130 Mass. 478.

See PERSONAL PROPERTY, TRUSTS.

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#### ASSESSORS, DUTIES OF, ETC.

Oath of office. Acts 1893, ch. 423.

Assessment of taxes. General provisions. Pub. Stats., ch. 11; Acts of 1882, ch. 76, 133, 165, 175, 217, 218, 243, 252; and subsequent years.

- To assess persons wishing to be taxed. 1893, ch. 417, § 20.  
 Correction of names upon tax bills. 1893, 417, § 16.  
 To furnish information to registrars of voters. 1893, 417.  
 To make certificate of portion of tax assessed as State, county or town tax, if required. Pub. Stats., ch. 11, § 93.  
 Duties of, in assessment of bank shares. Pub. Stats., ch. 13, §§ 8-19  
 May order collection forthwith from persons of doubtful credit. 1888, ch. 390; 1889, ch. 334; 1893, ch. 241.  
 May appeal from decision of tax commissioner. Pub. Stats., ch. 13, § 14.  
 Returns to Secretary of State of aggregate values, etc. Pub. Stats., ch. 11, §§ 54, 55; 1883, ch. 91; 1885, ch. 106; 1886, ch. 56; 1887, ch. 86; 1890, ch. 242.  
 To include a statement under oath of causes of diminished valuation. Pub. Stats., ch. 11, § 83.  
 To return to tax commissioner the names and taxation of corporations, etc. Pub. Stats., ch. 11, § 86.  
 Under this section assessors are required to return:—  
 1. Every Massachusetts business corporation *established* in the town, whether owning any assessable property there or not.  
 2. Every Massachusetts business corporation owning any real estate or machinery in the town.  
 3. Every railroad corporation assessed in the town; and also,  
 4. The *whole amount* of taxes laid or voted to be laid upon the *whole valuation of the town*, and not merely the amount laid upon the valuation of *corporation* property only.  
 Of assets and indebtedness, etc. Pub. Stats., ch. 11, § 90.  
 Of steam boilers. Pub. Stats., ch. 11, § 92.  
 Of loss sustained by exemption of ships, etc., engaged in the foreign carrying trade. Pub. Stats., ch. 11, § 90; 1887, ch. 373; 1889, ch. 286; 1891, ch. 116; 1893, ch. 149.  
 Of the property of literary, charitable, benevolent and scientific institutions. 1882, ch. 217; 1888, ch. 158.  
 To assess taxes of watch districts. Pub. Stats., ch. 34, §§ 16, 17.  
 Of fire districts. Pub. Stats., ch. 35, § 54.  
 To post lists of poll tax payers. 1893, ch. 417.  
 Division of poll tax bills. 1889, ch. 467.  
 Printing lists of assessed polls. 1893, ch. 417.

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#### ASSOCIATIONS.

##### SUPREME JUDICIAL COURT.

1870.

Shares in associations like the McKay Sewing Machine Association are not taxable as shares in corporations.

MORTON, J. The only question presented in this case is, whether the petitioner is liable to be taxed in Lawrence for the shares in the McKay Sewing Machine Association owned by him. This question must be decided by the construction of the statutes regulating taxation, and not upon any considerations of supposed policy or equity; and we are unable to find any provision of statutes which makes such shares taxable.

The McKay Sewing Machine Association is not a corporation. It has never received an act of incorporation, nor been organized as a corporation, under the general laws. A corporation can only be created and exist by sanction of the Legislature. This is a voluntary

association of individuals; and its articles of agreement, although they adopt some of the forms of managing the business usual in corporations, constitute a co-partnership. It cannot sue and be sued as a corporation; its members are individually liable for its debts; and it has none of the special attributes which belong to a corporation duly organized under our laws. *Oliver v. Liverpool and London Life and Fire Ins. Co.*, 100 Mass. 531. *Tyrell v. Washburn*, 6 Allen, 466.

The provision that each member may sell and transfer his interest, and thus introduce a new partner, though unusual, is not inconsistent with the contract of co-partnership. It is clear, therefore, that shares in this association could not be taxed under General Statutes, ch 11, § 4, as "stocks in a moneyed corporation," even if any such stocks could be taxed to the owners since the passage of the statute of 1865, ch. 283. Being a co-partnership, the laws applicable to that relation must govern its rights and liabilities; and it follows that the personal property held by it was property taxable in Boston, where its business is carried on, and not in Lawrence. General Statutes, ch. 11, § 15. *Little v. Cambridge*, 9 Cush. 298.

The petitioner, therefore, was not taxable in Lawrence for his interest in the personal property of the firm. But the tax in question was assessed upon the market value of his shares, treating them as so many shares of corporate stock. No provisions of statute or authorities are cited by which such a tax can be upheld. The property of each partner in a firm is an individual interest in all the assets as a tenant in common. For that interest, if the firm is established in this State, he is taxable in the town which is the business domicil of the firm; if he carries on business in another State, he is taxable at his place of residence. *Bemis v. Alderman of Boston*, 14 Allen, 366. He has no other interest in the firm, which is subject to taxation. The fact that by agreement between the partners, as in this case, the share or interest of each partner in the firm is transferable, does not make it taxable specifically. If such shares have a market value larger than the amount of property held by the firm, it is a speculative value, founded upon the expectation of future profits, and is not property which is taxable under our laws. The argument of the respondents, that these shares are as much property as stocks in corporations, and therefore ought to be taxed, is fallacious, because it necessarily results in double taxation of the same property. Formerly stock in corporations was taxable to the shareholders in the places of their residence, because the corporations were not taxed for any of their personal property except machinery employed in manufactures. To guard against double taxation, the tax acts required assessors to deduct from the value of the shares, the value of all property, real or personal, which was taxed directly to the corporation; and when an equivalent tax or excise was imposed directly upon corporations, the stock of shareholders was exempted from local taxation. Statutes of 1864, ch. 208. Statutes of 1865, ch. 283. If this tax is upheld, the property of the petitioner is subjected to double taxation,—once in the business domicil of the firm, and once in the town where he resides. We are, therefore, of opinion that the tax assessed by the city of Lawrence upon the petitioner was illegal. We have not deemed it necessary to consider what is the effect of the fact that the legal title to the property of the association is by the articles of agreement, vested in Mr. McKay as trustee. This fact cannot make the case more favorable for the respondents, because, if the property is to be regarded as property held in trust under Gen-

eral Statutes, ch. 11, § 12, cl. 5, it is clear that it is taxable to the trustee, and not to the petitioner. *Hoadley v. Essex*, 105 Mass. 519.

By ch. 275 of the Acts of 1878 (now incorporated in § 86 of ch. 11, and §§ 47-49 of ch. 13 of the Pub. Stats.), the law relating to the taxation of corporations was made applicable to companies, co-partnerships and other associations located in this Commonwealth, in which the beneficial interest is held in shares which are assignable without consent of the other associates specifically authorizing such transfer.

The Sup. Jud. Court, in Suffolk Co., in the case of *Gleason v. McKay*, has held the statute of 1878, ch. 275, to be unconstitutional as relating to such associations.

A number of persons formed an association, by an instrument in writing containing numerous articles, for the purpose of buying, selling and leasing railroad rolling stock, to be sold or leased to a certain railroad company, with provisions for admitting other persons to membership. The members of the association were to furnish money for the purchase of the rolling stock, and were to have certificates for the amounts so furnished, providing that the principal sum contributed by each member should be repaid in ten annual installments, with interest; both principal and interest being payable only out of the rentals received for the rolling stock. A plan was adopted by which the association delivered the property to a corporation as trustee, which issued the certificates to the members of the association, and also executed the leases to the railroad company, with provisions for a rental sufficient to meet the above payments of principal and interest, in addition to expenses, including taxes; and at the end of ten years the rolling stock was to become the property of the railroad company. All contracts relating to any business of the association, involving liabilities for the payment of money, were to be in writing, and made under the direction of the board of managers. The original board of managers was named in the articles of association, but the shareholders were to have the power to remove them and to elect others. At all meetings, every shareholder was to have one vote for each share of stock owned by him, and provision was made for the transfer of shares, and the association was not to be dissolved by the death of members. Every owner of one or more shares was to be entitled to a proportionate share of the rentals received. The meetings of the board of managers were always held in B., and all the business done by them for the association was done there, and the association never had any other place where its business was carried on, and the certificate holders never held any meeting. *Held*, that the association was a partnership; that its place of business was in B.; that rolling stock bought in pursuance of a vote of the board of managers authorizing such purchase, delivered to the corporation as trustee, and leased by the trustee to the railroad company, was personal property employed in the business of the association, within the Pub. Stats., ch. 11, § 24; and that, under the Pub. Stats., ch. 11, § 20, cl. 5, such property was taxable to the trustee in B. *Ricker v. American Loan and Trust Co.*, 140 Mass. 346.

**BANKS.**

See NATIONAL BANKS.

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**BETTERMENTS.**

Pub. Stats., ch. 51; 1882, 154; 1884, 226, 237, 280; 1885, 299; 1891, 170.

For decisions, see cases cited in the margin.

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**BONDS.**

Down to the time of the decision of the court in *Hale v. County Commissioners of Hampshire*, 137 Mass. 111 (1884), the assessors had generally regarded railroad bonds as being "public securities," and not as "debts due;" and that indebtedness could not be offset against such bonds for the purposes of taxation. It was held in that case that such bonds were not "public securities" within the meaning of the Pub. Stats., ch. 11, § 4, but were debts due, and the money invested in them was "money at interest," from which the owner was entitled, in determining the amount for which his personal estate should be taxed, to have money upon which he was paying interest deducted. But ch. 363 of the Acts of 1888 has since amended said section by inserting after the words "public securities," in the eighth line, the words "the bonds of all railroads including street railways." The effect of this amendment is to place railroad bonds in the same category as public securities. Hence no indebtedness can now be offset against them in the taxation thereof.

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**CHURCHES.**

See RELIGIOUS SOCIETIES.

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**COLLATERAL SECURITY.**

Bonds and stock pledged to corporations to be returned by them to the tax commissioner, and by him forwarded to the assessors of cities and towns by the twentieth day of June in each year. Pub. Stats., ch. 13, § 4.

See CORPORATIONS, *Returns of, to Assessors.*

## COLLECTION OF TAXES.

Stat. 1888, ch. 390, including forms. 1889, ch. 334; 1890, ch. 331; 1893, ch. 241.

See TAX SALES.

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## COLLECTORS OF TAXES.

Election by ballot. Pub. Stats., ch. 27, § 123.

Appointment in case of vacancy, etc. Stat. 1888, ch. 390, §§ 89, 90.

Bond of. Pub. Stats., ch. 11, § 62; ch. 27, § 124.

Failure to file. Pub. Stats., ch. 27, § 91.

Collectors may appoint deputies in certain cases. 1888, ch. 390.

Duties of, in collection of taxes—general provisions. Stat. 1888, ch. 390; 1889, ch. 334; 1890, ch. 423; 1893, ch. 241.

To receipt for State and county tax. 1884, ch. 298, § 8; 1890, ch. 423.

When to receipt for State, county or town tax separately. Pub. Stats., ch. 11, § 93; 1889, 467; 1890, 423.

To make returns to registers of voters of lists of persons who have paid taxes. 1893, ch. 417.

To give to mortgagor and mortgagee on demand, tax bill showing apportionment of tax. Pub. Stats., ch. 11, § 16.

Duties and bond to extend to taxes re-assessed. Pub. Stats., ch. 11, § 80.

Powers in collection of watch and fire districts. Pub. Stats., ch. 34, § 16; ch. 35, § 54.

This court has not jurisdiction in equity to enjoin a city or its collector against collecting a tax which a complainant alleges has been illegally assessed upon him by the board of assessors. *Brewer v. Springfield*, 97 Mass. 152.

A town collector cannot maintain an action against the administrator of the estate of one deceased for the amount of a tax upon personal property assessed to the "estate of" the deceased after the date of the administrator's appointment. *Wood v. Torrey*, 97 Mass. 321.

See Carleton, administratrix, *v. Ashburnham*, 102 Mass. 348, p. 46.

See TAX SALES; NATIONAL BANKS; INTEREST; ESTATES OMITTED; TAXES.

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## CORPORATIONS.

*Returns of.*

For the various returns to be made by corporations to the tax commissioner, see Pub. Stats., ch. 13. Of bank shares, to the assessors, by cashier, Pub. Stats., ch. 13, § 11.

All corporations existing under the laws of Massachusetts, whose shares are subject to taxation, are taxable under the various provisions of ch. 13, Pub. Stats.

See NATIONAL BANKS.

Generally speaking, corporations organized or chartered under the laws of this Commonwealth are not taxable locally for their personal property, but only for their real estate and fixed machinery.

See PERSONAL PROPERTY.

*Taxation of Real Estate of.*

Under the provisions of the Pub. Stats., ch. 11, §§ 13 and 20, cl. 2, the real estate of all corporations (except that of railroads within the five-rod limit, and certain *quasi* public corporations), and the machinery belonging to manufacturing corporations, employed in any branch of manufactures, are taxable in the towns or cities where situated or employed. Other property of the corporation is not so taxable. The following extract from a decision of the Supreme Court is given as establishing the rule that this property must be valued by the assessors upon their *judgment of its value*, and not by ascertaining what the *stock* of the corporation sells for in the market:—

"But, in determining whether the estate of the complainant had been correctly valued, we cannot doubt that the commissioners erred in deciding that the sales of the stock of a manufacturing company furnished the only test of the value of their real estate and machinery for the purposes of taxation. It is true that it was shown that the corporation owned no other property than this real estate and machinery, and that they owed no debts; and these circumstances, perhaps, made this species of evidence admissible. But it certainly would not be conclusive, if, indeed, it would be considered to any great extent trustworthy. The price which an individual seven-hundredths part of any estate would command in the market would hardly, in any case, be a test of the value of the real estate as a whole. But when it is considered that it is an interest in an estate incapable of partition, an estate, the use and employment of which is to be controlled by the will of the majority of owners, and which is to be subjected to the risks of such a business as that majority may choose to carry on with it; when its productive value may depend entirely upon the integrity and skill of the persons having a predominant influence in its management, or of those whom they may choose to employ,—it is obvious that a share subject to these contingencies might be of little value, and yet the market value of the whole estate be proportionately much greater."

"In adopting the arbitrary standard of value, and rejecting all other evidence, however competent and appropriate to the issue, a manifest wrong was done, which it is the duty of this court to correct; and the writ of *certiorari* must therefore issue." Chicopee *v.* Hampden, 16 Gray, 38 (1860).

*Taxation of Shares in.*

The shares in corporations organized under, or chartered by, law of this Commonwealth for the purpose of business or profit in this Commonwealth, are *not* taxable by town or city assessors, unless for school district or parish purposes. A list of these corporations taxed by the State is forwarded to each town and city in the State, in Tax Commissioner's Report, which is a list of corporations whose shares are exempt from local taxation.

Such corporations are taxed upon their franchise by the State under the provisions of the Pub. Stats., ch. 13, at a valuation and rate to be ascertained by the tax commissioner. This tax is collected directly of the corporation; and so much of it as is in proportion to the number of shares actually owned in each city and town in the Commonwealth, is allowed to said city or town respectively in the payment of its State tax.

See NATIONAL BANKS.

Shares of the capital stock of *foreign corporations*, if owned by citizens of this Commonwealth, are taxable to them here by the local assessors for their full value without deducting the value of the machinery and real estate belonging to such corporation, and taxed to it at the place where it is established.

See *Dwight v. Boston*, 12 Allen, 316 (1866).

Shares in national banks located in this State are taxable in the town or city in which the bank is located.  
See NATIONAL BANKS.

Shares in associations. See ASSOCIATIONS.

#### DAMS.

See REAL ESTATE; WATER POWER.

#### DECEASED PERSONS.

##### *Taxation of Undistributed Estates of.*

Pub. Stats., ch. 11, §§ 18, 19, 20, cl. 5, 7.

See *Carleton, adm'x, v. Ashburnham*, 102 Mass. 348.

Under Revised Statutes, ch. 7, § 10, cl. 7 [Pub. Stats., ch. 11, § 20, cl. 7], the personal estate of a deceased person was taxable in the town where he last dwelt, until his executors or administrators give notice to the assessors thereof that it has been distributed and paid over to the persons interested therein.

The personal estate of a deceased person, which is taxable in the town where he last dwelt, under Rev. Stats., ch. 7, § 10, cl. 7, is not taxable in any other town. *Hardy v. Yarmouth*, 6 Allen, 277 (1863).

The life interest terminating after the first of May, the life tenant or his representatives must pay the whole tax for the year. *Holmes v. Taber*, 9 Allen, 246.

A tax assessed upon the personality of a deceased person to his executor is the debt of the latter; and the collector of taxes may, under the Pub. Stats., ch. 12, § 21, bring an action against him to recover it more than two years from the time of his giving bond. *Dallinger v. Davis*, 149 Mass. 62.

An executor or administrator must not only make the return called for by § 38 of the Pub. Stats., ch. 11, of the property in his hands liable to taxation, but must in addition, in case of a partial or total

distribution, give notice thereof, under the Pub. Stats., ch. 11, § 20, cl. 7, to the assessors, stating the names and residences of and the amount paid to the several parties interested who are residents of this Commonwealth, in order to discharge his duty and avoid taxation, if it is within three years of his appointment, for the amount last assessed to him.

If an executor, who has nearly distributed the estate in his hands, is assessed on the first of May for the amount assessed to him in the preceding year, and is allowed by the assessors until June 15 to bring in a list of the property in his hands, and does not give to them the notice and information required by the Pub. Stats., ch. 11, § 20, cl. 7, in case of a distribution, until the November following, he cannot be said to have complied with the statute, and is liable for the amount so assessed to him. *Vaughan v. Street Commissioners of Boston*, 154 Mass. 143.

See TRUSTS.

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#### DISTRICT TAXES.

Interest may be collected on district taxes when authorized by vote. Pub. Stats., ch. 11, § 68.

#### *Fire Districts.*

Pub. Stats., ch. 35, §§ 40–61. 11 Met. 374.

Under the Pub. Stats., ch. 13, §§ 8–19, the shares in a national bank, of stockholders who reside in a regularly organized fire district in the town in which the bank is located, cannot be subjected to a tax assessed for fire district purposes. *Rich v. Packard National Bank*, 138 Mass. 527.

#### *Improvement Districts.*

Pub. Stats., ch. 27, §§ 37–40.

#### *School Districts.*

The school district system in this Commonwealth was abolished by Stat. 1882, ch. 219.

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#### DIVISION OF TAXES.

#### *Estates in Trust or under Guardianship.*

Pub. Stats., ch. 11, § 21.

#### *When Real Estate is divided.*

Pub. Stats., ch. 11, §§ 81–83.

#### *Of State, County, and Town Taxes.*

Pub. Stats., ch. 11, §§ 48–93.

## DOMICIL.

One actually residing in a town, May 1, is taxable there, if he has no domicil for taxation elsewhere, although he then intended to remove to another State, and had taken some steps in that direction. *Carnoe v. Free-town*, 9 Gray, 357 (1857).

See *Bulkley v. Williamstown*, 3 Gray, 493 (1855).

Otherwise, if he had left the town, not intending to return. *Colton v. Longmeadow*, 12 Allen, 598. *Briggs v. Rochester*, 16 Gray, 337 (1860). But see *Borland v. Boston*, 132 Mass. 89.

One not having a domicil in this State had, with a view to his marriage, hired a house in B., from April 1, and moved his furniture to it. April 9 he was married at R., and after a wedding tour, he returned to his house in B., May 2, and continued to reside there.

*Held*, that his domicil, May 1, for purposes of taxation, was B., and that he was not taxable in R. *Williams v. Roxbury*, 12 Gray, 21 (1858).

Living in B., in this State, with intention to return to N., where one had married, had children and business, then returning to N., out of this State, but leaving family in B.—his children there attending public schools—but always styling himself as of N., are facts sufficient for a jury to find that the person's domicil is N. *Cochrane v. Boston*, 4 Allen, 177 (1862).

If a man really intends to change his residence, and does change it, the motive which prompts him to make the change is immaterial. *Draper v. Hatfield*, 124 Mass. 53 (1878).

The choice of a tax payer as between two places of residence is an element to be considered in determining which is the real domicil; but a choice in favor of one place will not be permitted to control a preponderance of evidence in favor of another. The place of domicil, upon which so many important municipal obligations and privileges depend, is not left by the law to the choice of the citizen, except only as such choice may give character to existing relations and accompanying acts of residence are not in conflict with it. *Thayer v. Boston*, 124 Mass. 146 (1878).

Residing in a place with intention to remain an indefinite period, and without a fixed and settled purpose to

return, is sufficient to enable one to acquire a domicil there. *Whitney v. Sherborn*, 12 Allen, 111 (1866).

A minor ward was held to have changed his domicil, in *Kirkland v. Whately*, 4 Allen, 462.

A citizen of Massachusetts removing with his family to another State and retaining no dwelling-place in Massachusetts, though retaining his place of business here, and intending to retain his domicil here, and to return at some future indefinite time, has no domicil in Massachusetts. *Holmes v. Green*, 7 Gray, 299.

The following case is important as showing the limitation of intention in fixing the domicil for taxation.

**MELANCTHON W. BORLAND v. CITY OF BOSTON.**

It is no objection to the sufficiency of a written protest by a tax payer against the payment of a tax, under the Gen. Stats., ch. 12, § 56, that it was presented to the collector; that it was written across the face of the tax bill; and that it was not left with the collector but was taken away by the tax payer.

A person having his domicil in Boston, left that city in 1876 with his family to reside in Europe for an indefinite length of time, with the fixed purpose never to return to Boston as a place of residence, and to make some place other than Boston his residence when he should return; and, while in Europe, before May 1, 1877, fixed upon a place of residence in another State, but remained in Europe until 1879. *Held*, that he retained his domicil in Boston for the purposes of taxation on May 1, 1877.

LORD, J. In this case, two questions are presented for our decision: First, Was the tax paid under such a protest in writing as to entitle the plaintiff to recover it back if it had been illegally assessed? And, second, Were the instructions of the presiding judge upon the matter of a change of domicil correct?

The Gen. Stats., ch. 12, § 56, provides that "no tax paid to a collector shall be recovered back, unless it appears that it was paid after an arrest of the person paying it, a levy upon his goods, a notice of sale of his real estate, or a protest by him in writing." In the case at bar, the question arises upon the last branch of this provision, namely, whether the tax was paid after a protest in writing. The case finds that before the tax was paid there was written across the face of a tax bill, which tax bill was in the usual form, these words: "Both items of this tax are paid under protest, M. Woolsey Borland not being, on May 1, 1877, an inhabitant of Boston, nor then having any personal property or income there taxable, and said taxes having been illegally assessed. Boston, April 1, 1878, M. W. Borland, by J. Nelson Borland, attorney."

No objection is made because of the fact that the protest is signed by attorney, nor is any question made of the authority of the attorney, so that it is to be considered as if signed and presented in person by the plaintiff under the same circumstances in which it was actually presented.

Three objections are made to the sufficiency of this as a written protest: First, That it does not appear to have been presented to a

proper officer of the city. Second, That it was not, in and of itself, a separate and independent document with such formalities as would attract the attention of the proper officer who should receive it. Third, That it was not left with an officer of the city, but was taken away by the protesting party.

As to the first of the objections, it is said that "the statute requires the delivery of the protest relied upon to some executive or other officer of the city or town." The counsel for the defendant does not, however, designate the officer to whom, he contends, that it should be delivered; nor does the statute, in express words. Inasmuch as the statute does not state the officer to whom the protest is to be made, we think that by its language there is a strong implication that the protest should be made to the collector, and that, whether a protest made to a different officer would be sufficient or not, a protest properly made by the tax payer to the collector is sufficient. The language of the statute is. "No tax paid to a collector shall be recovered back unless it appears that it was paid after . . . a protest by him in writing." The various other conditions, such as arrest of person, notice of sale of land for non-payment, or levy upon his goods, must all be within the knowledge and under the direction of the collector, and not necessarily within the knowledge of any other officer of the city; so that the notice given to the collector would place him and the city in the same relation to the subject of knowledge of protest as to every other of the conditions upon which money could be recovered back. A protest in writing to the collector is therefore enough.

Secondly, It is said that the protest which the law requires is a formal, separate and independent document. But the tax bill by which the tax payer knows that a tax has been assessed upon his poll and his estate comes from the collector, and the amount of it is to be paid to the collector. It would therefore seem that, to insure certainty and identity, the particular tax bill which makes claim of the payment of the illegal tax may properly be called to the attention of the collector as identifying the illegal tax; and a protest being written upon it, and, as in this case, stating "this tax," seems calculated to give more direct, immediate and accurate information of the tax payer's claim than could be derived from any separate and independent protest, however formal and carefully prepared.

The objection also suggested that, in the haste of the receipt of taxes by the collector, a protest across the face of the instrument might not be observed by him, applies, in our judgment, with equal force to any other omission of duty in the collector, like the failure to preserve a separate paper handed to him by the tax payer immediately before the presentation of his tax bill and money for the collector's receipt. Indeed, it seems scarcely possible that a collector should take a tax bill into his hands for the purpose of affixing his own signature to it, and actually affix his signature, without observing the writing across the face of his printed bill. But if it were true that the collector would be less likely to take notice of the protest thus presented, than if it had been presented in some other form, it would be no objection to its sufficiency.

The remaining objection is an objection arising from the fault of the defendant rather than from that of the plaintiff. The tax payer has done his whole duty when he has made and presented to the collector a protest in writing against the tax. He cannot be responsible for the disposition of that protest by the officer. The officer may wilfully destroy it. The tax payer cannot be responsible

for that. The collector may carelessly lose possession of it, or he may negligently put it in the wrong place, or deliver it to a wrong person. None of these contingencies can affect the validity of the protest, nor does it make any difference that he carelessly or negligently delivered it to the tax payer himself. It does not appear that the tax payer in this case had any agency in causing it to be re-delivered to him; nor do we see how in any mode, in the absence of fraud, any dealing with the protest by the collector after he has received the protest in writing, or by the tax payer after he has performed his whole duty by delivering it to the officer, can affect the rights of the parties.

In the opinion of a majority of the court, the protest offered was rightly admitted in evidence.

The other question raised is upon the correctness of the instructions of the presiding judge upon the question of *domicil*.

The evidence tended to show that the plaintiff was born in Boston in 1824, and had lived there until June, 1876, when he sailed for Europe with his family. He testified that when he left Boston he had definitely formed the intention of not returning to Boston as a resident; that in the fall of 1876 he had decided to make Waterford, Connecticut, his residence, and then formed the intention of purchasing land there, which he bought on May 28, 1877; and that he remained in Europe until 1879, when he returned to this country, and went to Waterford. On this evidence, the judge instructed the jury, "that a citizen, by the laws of this Commonwealth, must have a home or *domicil* somewhere on the first day of May, for the purpose of taxation; that in order to change such home or *domicil*, once acquired, and acquire a new one, the intention to make the change and the fact must concur; that if the plaintiff, with no definite plan as to length of time he should remain abroad, and no definite purpose about a change of *domicil*, went to Europe with his family, that would not effect a change of his *domicil* from Boston, and he would remain liable to taxation there; but that if he left Boston in 1876 with his family to reside in Europe for an indefinite length of time, with the fixed purpose never to return to Boston again as a place of residence, and with the fixed purpose of making some place other than Boston his residence whenever he should return to the United States, and had in his mind fixed upon such place of residence before May 1, 1877, and remained in Europe until after that time, he was not liable to this tax as an inhabitant of Boston on the first of May of that year; that whether he had done enough to make Waterford his home or not, was not essential in this case,—if he had lost his home in or ceased to be an inhabitant of Boston at the time, he was not taxable there."

Certainly, the latter part of this instruction would be understood to be in conflict with the former; for, not referring now to the words used by the judge, the obvious meaning of the whole sentence is, first, to instruct the jury that a man once having a home here is taxable here until both the purpose to change his home and the fact of changing his home concur; and afterwards to instruct them that, if his intention to make another place his home is formed after he leaves this country, and before the first of May, such intention removes his liability to taxation, even although the fact of change does not concur with the intention. Although there is this obvious inconsistency, it arises partly from inherent difficulties in the case, partly from the impossibility of stating a fixed rule which shall be applicable to all cases, under the infinite variety of circumstances

attending them, and the various adjudications which have been made upon the subject. The source of the difficulty is in the use of words of exactly, or substantially, or partially, the same signification, but at different times used with different significations.

There are certain words which have fixed and definite significations. "Domicil" is one such word; and, for the ordinary purposes of citizenship, there are rules of general, if not universal, acceptation applicable to it. "Citizenship," "habitancy" and "residence" are severally words which may in the particular case mean precisely the same as "domicil," but very frequently they may have other and inconsistent meanings; and, while in one use of language the expressions a change of domicil, of citizenship, of habitancy, of residence, are necessarily identical or synonymous, in a different use of language they impart different ideas. The statutes of this Commonwealth render liable to taxation in a particular municipality those who are inhabitants of that municipality on the first day of May of the year. Gen. Stats., ch. 11, §§ 6, 12. It becomes important, therefore, to determine who are inhabitants, and what constitutes habitancy.

The only case adjudged within this Commonwealth, in which the word of the statute, "inhabitant," is construed to mean something else than "being domiciled in," is *Briggs v. Rochester*, 16 Gray, 337, although that decision is subsequently recognized in *Colton v. Longmeadow*, 12 Allen, 598. In *Briggs v. Rochester*, Mr. Justice Metcalf, in speaking of the word "inhabitant," says that it has not the meaning of the word "domicil" "in its strictly technical sense, and with its legal incidents." He says, also, that the word "domicil" is not in the Constitution nor in the statutes of the Commonwealth. So far as the Constitution is concerned, this is correct; but he had evidently overlooked a statute of ten years before, in which the word "domicil" was used, and upon the very subject of taxation, in a proviso in these words: "Provided that nothing herein contained shall exempt said person from his liability to the payment of any tax legally assessed upon him in the town of his legal domicil." Stat. 1850, ch. 276; Gen. Stats., ch. 11, § 7. This language is a strong legislative assertion that domicil is the test of liability to taxation; and in an opinion given by the justices of this court to the House of Representatives in 1843, in reference to a student's right to vote in the municipality in which he is residing for the purpose of education, it was said, "And as liability to taxation for personal property depends on domicil." 5 Met 587, 590.

Nor do we think that the opinion in *Briggs v. Rochester* gives the true force, as used in the Constitution, of the word "inhabitant;" for we cannot doubt that for the purposes of taxation the word "inhabitant" must be used in the same sense as when used in reference to electing and being elected to office; especially as at that time the payment of a tax duly assessed was one of the qualifications of an elector; and more especially as the Constitution itself professes to give its definition of "inhabitant" for the purpose of removing all doubt as to its meaning. Its language is, "And to remove all doubts concerning the meaning of the word 'inhabitant' in this Constitution every person shall be considered as an inhabitant, for the purpose of electing and being elected into any office or place within this State, in that town, district or plantation where he dwelleth, or hath his home." Const. Mass., ch. 1, § 2, art. 2.

Nor do we see how the construction given to the statute is consistent with the result at which the court arrived. The learned judge says, "In the statute on which this case depends, we are of opinion:

that the words 'where he shall be an inhabitant on the first day of May,' mean where he shall have his home on that day." It is, therefore, clear that the learned judge does not give to the word "inhabitant" the meaning which the construction of the statute before referred to authorizes him to give, but he does give the exact definition of the Constitution, to wit, "where he dwelleth, or hath his home;" for these words have not in the Constitution two meanings, but the single signification given to them by the learned judge, "his home," the exact, strict, technical definition of domicil.

We cannot construe the statute to mean anything else than "being domiciled in." A man need not be a resident anywhere. He must have a domicil. He cannot abandon, surrender or lose his domicil, until another is acquired. A cosmopolite, or a wanderer up and down the earth, has no residence, though he must have a domicil. It surely was not the purpose of the Legislature to allow a man to abandon his home, go into another State, and then return to this Commonwealth, reside in different towns, board in different houses, public or private, with no intention of making any place a place of residence or home, and thus avoid taxation. Such a construction of the law would create at once a large migratory population.

Although we have said that the case of *Briggs v. Rochester* has been recognized in *Colton v. Longmeadow*, 12 Allen, 598, yet we ought to state that the decision in *Colton v. Longmeadow* was placed upon entirely different grounds. It was there held that the plaintiff had lost his domicil in Massachusetts because he had actually left the Commonwealth and was actually *in itinere* to his new domicil, which he had left this Commonwealth for the purpose of obtaining, and which in fact he did obtain. If it should be deemed sound to hold that a person, who, before the first of May, with an intention in good faith to leave this State as a residence and to adopt as his home or domicil another place, is in good faith and with reasonable diligence pursuing his way to that place, is not taxable here upon the first of May, the doctrine should be limited strictly to cases falling within these facts. And both of the cases cited, *Briggs v. Rochester* and *Colton v. Longmeadow*, would fall within the rule. In each of those cases the plaintiff had determined, before starting upon his removal, not only upon his removal, but upon his exact destination, and in fact established himself, according to his purpose, without delay, and within a reasonable time.

We think, however, that the sounder and wiser rule is to make taxation dependent upon domicil. Perhaps the most important reason for this rule is, that it makes the standard certain. Another reason is, that it is according to the general views and traditions of our people.

One cannot but be impressed by certain peculiarities in *Briggs v. Rochester*. The bill of exceptions in that case begins thus: "It was admitted by both parties, and so presented to the jury, that the only question at issue was the domicil of the plaintiff on the first of May, 1858; and that if he was then an inhabitant of the defendant town, the tax was rightly imposed; but that if he was not on that day an inhabitant of said town, he was not then rightly taxable and taxed therein." Nothing can be more clear than that all parties understood, and the case was tried upon the understanding, that domicil and inhabitancy meant the same thing; otherwise, domicil, instead of being "the only question at issue," would not have been in issue at all. And the judge in giving his opinion says that, if domicil in

its strictly technical sense, and with its legal incidents, was the controlling fact, the plaintiff was rightly taxed in Rochester.

•Another noticeable fact in *Briggs v. Rochester* is this: that if the tax payer in the pursuit of his purpose is beyond the line of the State before the first of May, he is not liable to taxation in the State; but if by detention he does not cross the line of the State till the first of May, he is taxable here. We cannot adopt a rule which shall make liability to taxation depend upon proximity to a State line.

We have said that we prefer the test of *domicil*, because of its certainty, and because of its conformity to the views and traditions of our people, and, we may add, more in accordance with the various adjudications upon the subject in this State, and more in accord with the general legal and judicial current of thought. It is true, that, as said by Mr. Justice Metcalf, "it has repeatedly been said by this and other courts, that the terms '*domicil*,' '*inhabitancy*' and '*residence*' have not precisely the same meaning." But it will be found upon examination that these three words are often used as substantially signifying the same thing.

In one of the earliest cases, *Harvard College v. Gore*, 5 Pick. 370, 377, Chief Justice Parker, in defining the word "*inhabitant*" as used in the laws, defined it as one which imported not only *domicil*, but something more than *domicil*. "It imports citizenship and municipal relations; whereas, a man may have a *domicil* in a country to which he is an alien, and where he has no political relations . . . An *inhabitant*, by our Constitution and laws, is one who, being a citizen, dwells or has his home in some particular town, where he has municipal right and duties, and is subject to particular burdens; and this *habitancy* may exist or continue notwithstanding an actual residence in another town or another country." There are other passages in the same opinion which although used *alio intuitu*, yet clearly indicate the current of judicial thought. For example: "The term '*inhabitant*' imports many privileges and duties which aliens cannot enjoy or be subject to," p. 373; "does not affix his *domicil* or *habitancy*," p. 372; "a pretended change of *domicil* to avoid his taxes," p. 378. There are other similar expressions running through the whole opinion.

In *Lyman v. Fiske*, 17 Pick. 231, the views of Chief Justice Parker in *Harvard College v. Gore* were considered by Chief Justice Shaw; and although expressing no dissent from the views of Chief Justice Parker, it is evident that in his apprehension the word "*inhabitant*" as used in the Constitution imported one *domiciled*, and he did not deem it important to consider whether it imported anything else in relation to political rights, duties and liabilities than the word "*domiciled*" would import. But as the views of that magistrate are never to be slightly regarded, and as he gave the opinion in both the cases decided by this court, cited by Mr. Justice Metcalf as settling that the words "*domicil*," "*habitancy*" and "*residence*" have not precisely the same meaning, we cite from his opinion to show what his views were of "*domicil*" and "*habitancy*": "In some respects perhaps there is a distinction between *habitancy* and *domicil*, as pointed out in the case of *Harvard College v. Gore*, 5 Pick. 377, the former being held to include citizenship and municipal relations. But this distinction is believed to be of no importance in the present case; because all the facts and circumstances, which would tend to fix the *domicil*, would alike tend to establish the *habitancy*. It is difficult to give an exact definition of '*habitancy*.' In general terms, one may be designated as an *inhabitant* of that place which consti-

tutes the principal seat of his residence, of his business, pursuits, connections, attachments, and of his political and municipal relations. It is manifest, therefore, that it embraces the fact of a residence at a place with the intent to regard it and make it his home. The act and intent must concur, and the intent may be inferred from declarations and conduct."

It is entirely clear that, in his opinion, so far as relates to municipal rights, privileges and duties, there is substantially no distinction between "domicil" and "habitancy." And, as further illustrating the views of that magistrate and the general sentiment of our people as to the use of such language in legislative enactments, we cite his language in *Abington v. North Bridgewater*, 23 Pick. 170, 176: "In the several provincial statutes of 1692, 1701 and 1767, upon this subject, the terms 'coming' to sojourn or dwell,' 'being an inhabitant,' 'residing and continuing one's residence,' 'coming to reside and dwell,' are frequently and variously used, and we think they are used indiscriminately, and all mean the same thing, namely, to designate the place of a person's domicil. This is defined in the Constitution, ch. 1, § 2, for another purpose, to be the place 'where one dwelleth or hath his home.'"

Authorities could be multiplied almost indefinitely in which it has been held by this court that, so far as it relates to municipal rights, privileges, powers or duties, the word "inhabitant" is, with the exceptions before referred to, universally used as signifying precisely the same as one domiciled. See *Thorndike v. Boston*, 1 Met. 242, 245. *Sears v. Boston*, 1 Met. 250, 252. *Blanchard v. Stearns*, 5 Met. 298, 304. *Otis v. Boston*, 12 Cush. 44, 49. *Bulkley v. Williamstown*, 3 Gray, 493, 494.

As illustrative, however, of the fact that domicil and habitancy are, for the ordinary purposes of citizenship, such as voting, liability to taxation and the like, identical, and that when they are susceptible of different meanings they are used *alio intuitu*, we cite the language of Chief Justice Shaw in *Otis v. Boston*, 12 Cush. 44, 49: "Perhaps this question has heretofore been somewhat complicated, by going into the niceties and peculiarities of the law of domicil, taken in all its aspects; and there probably may be cases where the law of domicil, connected with the subject of allegiance, and affecting one's national character, in regard to amity, hostility and neutrality, is not applicable to this subject. But as a man is properly said to be an inhabitant where he dwelleth and hath his home, and is declared to be so by the Constitution, for the purpose of voting and being voted for; and as one dwelleth and hath his home, as the name imports, where he has his domicil, most of the rules of the law of domicil apply to the question, where one is an inhabitant."

A very strong case of retention of domicil, while *in itinere* to a new one which is subsequently reached, is *Shaw v. Shaw*, 98 Mass. 158, in which the court say that the rule of *Colton v. Longmeadow*, which merely followed *Briggs v. Rochester*, "is such an exception to the ordinary rule of construction as ought not to be extended."

Upon the whole, therefore, we can have no doubt that the word "inhabitant," as used in our statutes when referring to liability to taxation, by an overwhelming preponderance of authority, means "one domiciled." While there must be inherent difficulties in the decisiveness of proofs of domicil, the test itself is a certain one; and inasmuch as every person, by universal accord, must have a domicil, either of birth or acquired, and can have but one, in the present state of society it would seem that not only would less wrong be done, but

less inconvenience would be experienced, by making domicil the test of liability to taxation, than by the attempt to fix some other necessarily more doubtful criterion.

Whether the cases of *Briggs v. Rochester* and *Colton v. Longmeadow* should be followed in cases presenting precisely similar circumstances, the case at bar does not require us to decide; and we reserve further expression of opinion on that question until it shall become necessary for actual adjudication. If they are to be deemed authority they should certainly be limited to the exact facts, where a person before leaving this Commonwealth has fixed upon a place certain as his future home, and has determined to abandon this Commonwealth for the purpose of settling in his new home, and is, upon the 1st of May, without the Commonwealth, in good faith and with reasonable despatch actually upon his way to his new home. The plaintiff does not bring himself within this rule; for although he might have left the Commonwealth with the fixed purpose to abandon it as a residence, he did not leave it on his way to a place certain which he had determined upon as his future residence, and was proceeding to with due despatch; and, upon the general rule that, having had a domicil in this Commonwealth, he remains an inhabitant for the purpose of taxation until he has acquired a new domicil, the intention and fact had not concurred at the time when this tax was assessed. The instructions of the presiding judge, therefore, inasmuch as they were not based upon the rules here laid down, were not accurately fitted to the facts of the case, and the *exceptions must be sustained.* 132 Mass. 89.

#### ESTATES OMITTED IN THE ANNUAL TAXATION.

##### *Assessments of Taxes upon.*

Pub. Stats., ch. 11, § 78. Stat. 1885, ch. 85; 1886, ch. 85; 1888, ch. 362.

The tax authorized by statutes of 1868, ch. 320, as amended by the statutes of 1873, ch. 272 (Pub. Stats., ch. 11, § 78), to be assessed upon the property of any person to a certain amount, and liable to taxation, discovered by the assessors, after their warrant has been committed to the collector, to have been omitted from the last annual assessment, is not a new tax, but an amendment of the annual assessment; and it is immaterial that a person, who has not furnished the assessors with a list of his taxable property, is not the actual owner of property so assessed to him. *Harwood v. North Brookfield*, 130 Mass. 561 (1881). See OMITTED ESTATES AND POLLS.

A tax upon the personal property of a person, who does not bring in a list to the assessors, as required by the Gen. Stats., ch. 11, § 22, may be assessed on "personal property," without any enumeration of particular kinds or items of property, if the assessors are unable to

ascertain such particulars; and an additional assessment upon personal property, discovered by the assessors to have been omitted from the last annual assessment, as authorized by the Stats. of 1868, ch. 320, may be laid in the same manner. *Noyes v. Hale*, 137 Mass. 266.

Assessors of taxes cannot be said to "discover" that the property of a person liable to taxation has been omitted from the last annual assessment, within the meaning of the Stats. of 1868, ch 320, until they become satisfied as a board that there has been such omission; and private information of the omission obtained by one member of the board, before the tax list and warrant have been committed to the collector, is not sufficient. *Noyes v. Hale*, 137 Mass. 266.

The provision of the Stats. of 1868, ch. 320, requiring that the additional tax therein authorized, upon property discovered by the assessors to have been omitted from the last annual assessment, shall be entered in the tax list of the collector, may be complied with by entering the same in a separate book, or on a separate paper, with a new warrant for its collection. *Noyes v. Hale*, 137 Mass. 266.

An additional tax authorized by the Stats. of 1868, ch. 320, upon property discovered by the assessors to have been omitted from the last annual assessment, is properly assessed to the owner of the property on the first day of May, although he has died between that day and the date of the new assessment, and not to his executor. *Noyes v. Hale*, 137 Mass. 266.

In an action for the amount of a tax assessed, under the Stats. of 1868, ch. 320, upon property discovered by the assessors to have been omitted from the last annual assessment, a statement, made by one assessor to his associates at a meeting of the board, of a private conversation between him and the executor of the deceased owner of the property, in relation to its valuation, is admissible in evidence; and evidence that the conversation was not stated truly is immaterial. *Noyes v. Hale*, 137 Mass. 266.

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#### EVASION OF TAXATION.

Pub. Stats., ch. 11, §§ 26–30.

See *Drapier v. Hatfield*, 124 Mass. 53. *Thayer v. Boston*, 124 Mass. 132. *Wheeler v. Goulding*, 13 Gray, 539.

*Great Barrington v. County Commissioners*, 112 Mass. 218.

Assessors of taxes are not bound by a list of property brought in for assessment and sworn to, if it appears from an examination of the person who brings it in that it is not true. *Hall v. Middlesex*, 10 Allen, 100 (1865).

Under the Gen. Stats., ch. 11, § 25, now Pub. Stats., ch. 11, § 40, after a person has seasonably filed a schedule purporting to be a true list of all his property liable to taxation, and has made oath to the same, the assessors have no right to add to such list other property for which they consider him taxable, and assess him thereon, without making any inquiries of him in relation thereto. *Moors v. Street Commissioners*, 134 Mass. 431.

See CORPORATIONS, *Returns of*; Pub. Stats., ch. 11, § 85; ASSESSORS, *Duties of, etc.*; ASSOCIATIONS.

**EXEMPTION FROM TAXATION.**

Pub. Stats., ch. 11, §§ 5-10.

As to shares in national banks. See Pub. Stats., ch. 13, §§ 18-19.

Shares in the guarantee capital or permanent funds acquired by mutual *marine*, mutual *fire and marine*, or mutual *fire* insurance companies organized under the provisions of our statutes, are taxable under the provisions of ch. 18 of the Pub. Stats., and are therefore not taxable to holders by the local assessors.

See Pub. Stats., ch. 13, § 50.

Trust funds held by the New England Trust Company, and other trust companies chartered since 1871, except the Worcester Safe Deposit and Trust Company, and the Massachusetts Loan and Trust Company, are taxable under charter provisions similar to those of Pub. Stats., ch. 18, and are therefore exempt from local taxation.

As to taxation of such corporations chartered after May 28, 1888, see 1888, ch. 413.

As to real estate of the Commonwealth, sold by Commissioners of Public Lands, and agreements for deeds given, see Pub. Stats., ch. 11, § 5, cl. 2.

A farm and the farming stock owned by an institution incorporated within this Commonwealth for the education of youth, and by it worked solely to raise produce and do team work for a boarding-house kept by the institution to supply board to the students at its actual cost, is exempted from taxation by the General Statutes, ch. 11, § 5, cl. 3; and it is immaterial that one-eighth of the farm which consists of waste and swampy land, and connects other parts which are cultivated and with which it was bought, is suffered to lie unused. *Wesleyan Academy v. Wilbraham*, 99 Mass. 599 (1868).

An institution organized under the Pub. Stats., ch. 115, for the education of boys owned a large farm on which were the school buildings, two farm houses, barns and other buildings adapted for farm purposes and live stock. The scholars, in addition to attending school, were required to work on the farm two or three hours a day, and were taught agriculture. The price of board and tuition was \$100 a year for each scholar. The products of the farm and the live stock were for the most part consumed in furnishing food for the scholars, but others were sold or bartered and the proceeds applied to the maintenance of the school. *Held*, that, under the Pub. Stats., ch. 11, § 5, cl. 3, the whole of the property of the institution was exempt from taxation. *Mt. Hermon Boys' School v. Gill*, 145 Mass. 139.

And where the trustees of a lunatic hospital held an estate of one hundred and ten acres for the use of the hospital, part of which (consisting of arable land) was cultivated for the use of the institution, and a part (being salt marsh) remained unimproved, the court held

That the exemption was not limited to merely necessary grounds.

That the officers were the parties to decide what lands were reasonably required for the institution, and what use would promote its purposes; and that, in the absence of anything showing abuse, mere extent of grounds would not determine that their discretion was wrongly exercised. *Mass. General Hospital v. Somerville*, 101 Mass. 319.

And where land had been purchased, but not actually put in use, for a hospital, it was held to be exempt from taxation.

SUPREME JUDICIAL COURT.

LAW—NOVEMBER, 1873.

*NEW ENGLAND HOSPITAL v. CITY OF BOSTON.*

Opinion of the Court.

GRAY, C. J. The facts agreed show that the plaintiffs, at the date of the assessment of this tax, had recently purchased the land in question for the purpose of establishing and maintaining a hospital thereon, and were diligently proceeding with the preliminary measures necessary to the erection of the same. The land must therefore be deemed to have been then occupied by them for the charitable purposes for which they were incorporated, and as such exempted from taxation by the Gen. Stats., ch. 11, § 5, cl. 3. Judgment for the plaintiffs. *New England Hospital v. City of Boston*, 113 Mass 518.

Still further in this direction is the following case:—

SUPREME JUDICIAL COURT.

LAW—AUGUST 31, 1875.

*TRINITY CHURCH v. CITY OF BOSTON.*

GRAY, C. J., did not sit. MORTON, J., absent.

On and before May 1, 1873, the plaintiff, a religious corporation, duly established under the laws of this Commonwealth, owned a lot of land on St. James Avenue, in the city of Boston.

On May 1, 1873, the defendant caused certain taxes to be assessed upon the said lot, which taxes, amounting to \$2,313.27, were paid, under protest, to the treasurer of the city on Dec. 31, 1873. The work of building a new house of worship on St. James Avenue, to replace the plaintiff's church on Summer Street, destroyed by the fire of Nov. 9, 1872, was begun on the lot, before the assessment was laid, by driving a part of the piles for the foundation of the edifice; but no further progress has been made in the erection of the building, that being as far as the work could reasonably be advanced during the winter after the fire, and the work has been continued with all reasonable diligence ever since. It was then, and is now, the intention of the proprietors of the plaintiff corporation to use the lot on St. James Avenue for purposes of religious worship only; and they have caused the work of building the new church to be carried on with all reasonable diligence. All the land included in the assessment is necessary for the use of the church, and is intended for no other purpose. A tax was assessed, for the year 1873, on the lot on Summer Street on which the church stood previously to the fire; and it was paid, as that lot had been abandoned as a site for a house of religious worship.

The lot on St. James Avenue was purchased before the fire of Nov. 9, 1872; and, if the church on Summer Street had not been destroyed by that fire, the society would have worshipped in that edifice until the new one was completed, in which case the lot on Summer Street would not have been subject to taxation for the year 1873. The St. James Avenue lot is the only property belonging to the plaintiff claimed to be exempt from taxation under the Gen. Stats., ch. 11, § 5, cl. 7.

**COLT, J.** The statutes, by which "houses of religious worship," "when owned by a religious society, or held in trust for the use of religious organizations," are exempted from taxation, have been uniformly assumed or construed to exempt the land upon which such houses are erected. Gen. Stats., ch. 11, § 5. Stats. 1865, ch. 206. *Lowell Meeting-house v. Lowell*, 1 Met. 538. The purpose of the statute is to relieve such organizations from the burden of taxation upon property devoted to public uses; and, as the land upon which the building stands is essential to the existence of the structure, it is fairly to be presumed that it was the intention of the Legislature to include it in the provisions of the statute, by the phrase "houses of religious worship."

It is not essential that the property thus exempt should be actually used, or should be in a condition to be actually used, for purposes of religious worship. Such a construction would exclude from the benefits of the statute all unfinished houses of worship, and all which, by accident or want of repair, had become temporarily unfit for use, or the use of which had for any reason been temporarily suspended.

The occupation for religious purposes, which the statute contemplates, does not require the actual completion of the structure. And such occupation continues, notwithstanding temporary interruptions in its use.

By a clause in the statute, which is part of the same sentence which secures this exemption, it is provided that "portions of such houses, appropriated for purposes other than religious worship, shall be taxed at the value thereof to the owners of the houses." And this would seem to imply that it is the appropriation of the property, or any part of it, to the sacred uses contemplated which secures the exemption.

It has been recently held in *New England Hospital v. Boston*, 118 Mass. 518, that land purchased by a charitable institution, where measures had been taken preliminary to commencing the erection of a hospital thereon, was occupied by the society for the purposes for which it was incorporated, and so was exempt from taxation under a clause which exempts such property when so occupied.

It is not necessary in this case to define at what stage in the erection of a building the property becomes a house of religious worship, or to say that land only may, under some circumstances, be exempt from taxation, although no building has been actually begun upon it. For a majority of the court are of opinion that real estate held by a religious society, not more than sufficient in extent to meet its reasonable requirements in this respect, and devoted by such society in good faith to the erection of a church edifice, upon which the work of erection already commenced is prosecuted without unreasonable delay, and being all the real estate which is so held, is entitled to the exemption given by the statute.

And this, upon the facts agreed, disposes of this case.

Judgment for the plaintiff. 118 Mass. 164.

The following case is of interest as to the rule of division where an estate is partly taxable and partly exempt:—

SUPREME JUDICIAL COURT.

LAW—JANUARY, 1874.

CITY OF CAMBRIDGE *v.* CO. COM'RS OF MIDDLESEX.

Opinion of the Court.

COLT, J. The upper stories of Holyoke House, a building owned by the President and Fellows of Harvard College, are appropriated to the students, and used for purposes within the college charter; they are therefore exempt from taxation. Gen. Stats., ch. 11, § 5. The lower story, which is used for other purposes, is not exempt. The question upon this petition for a *certiorari* is, whether the rule adopted by the assessors of Cambridge for ascertaining the taxable value of the last-named portion, was erroneously changed by the county commissioners on appeal to them by the college.

The valuation of the assessors was made by adding the value of the land to the value of the lower story, including the foundations, as if there had been a building of only one story, the whole of which was subject to taxation.

But the county commissioners estimated the taxable value of the property at one-third of the value of the whole building, together with one-half of the value of the land, and ordered the city to remit a sum declared by them to be in excess of a just and fair assessment.

The building and land, it is said, must be treated, for the purpose of the valuation, as an organized whole. The upper stories cannot exist without the land and foundations to support them. Some part of the value of the lower story must enter into the value of the upper stories, while the upper part of the building must in the same way be more or less important and valuable to the lower. To some extent the land and foundations are appropriated to college purposes, and their whole value cannot fairly or legally be annexed to the lower story of the building.

It was within the authority of the county commissioners to revise an assessment made upon a wrong principle; and it is not shown by the petitioners that any error was made in the rule adopted by them.

The principle upon which the apportionment was made is not stated. It may have been made according to the estimated ratable value of each part, or by some other rule equally just and equitable.

Their action is not open to revision upon the allegations in this petition. Petition dismissed with costs. Cambridge *v.* County Commissioners of Middlesex, 114 Mass. 337.

SUPREME JUDICIAL COURT.

LAW—APRIL, 1876.

TRUSTEES OF THE CHAPEL OF THE GOOD SHEPHERD *v.* CITY OF BOSTON.

Opinion of the Court.

GRAY, C. J. The plaintiff, by its charter, is "made a body corporate for religious and charitable purposes," and is empowered to "erect, hold, maintain and let lodging-houses within the city of Bos-

ton, upon such terms and conditions as it may determine, subject to the laws of the Commonwealth," as well as to "erect, hold and establish churches or chapels in said city for public religious worship," and to hold real and personal estate to the amount of \$200,000, "the whole income of which shall be devoted to religious and charitable uses." Stat. 1868, ch. 114.

In order to exempt real estate belonging to a charitable institution from taxation, it is not enough that the income derived therefrom should (as all the income of the corporation, from whatever source derived, must) be applied to the purposes for which it was incorporated; but the real estate itself must be occupied by the corporation or its officers for those purposes. Gen. Stats., ch. 11, § 5, cl. 3.

The chapel erected and held by the plaintiff was doubtless occupied by the corporation for a charitable and religious purpose, and is admitted to have been exempt from taxation; and lodging-houses let to poor tenants without compensation might fall within the same rule.

But the rooms let by the plaintiff to tenants, receiving the usual rate of rent, were clearly not occupied by the corporation or its officers for religious or charitable purposes, within the meaning of the tax act. Lowell Meeting-house *v.* Lowell, 1 Met. 538. Fierce *v.* Cambridge, 2 Cush. 611. The power conferred by the charter was broad enough to authorize the corporation to let rooms upon these terms. But it did not make the purpose of investment and profit, for which these rooms were improved and used, a charitable or religious purpose in any legal aspect.

As part, at least, of the plaintiff's real estate was not exempted from taxation, this action cannot be maintained. Bourne *v.* Boston, 2 Gray, 494. And, according to the terms of the case stated, there must be judgment for the defendant. Chapel of Good Shepherd *v.* Boston, 120 Mass. 212.

The following decision is of importance, as showing the construction to be placed upon the limit of real estate allowed to be held exempt from taxation under special charter:—

An assessment by the aldermen of Boston upon land of Harvard College, under the statutes of 1866, ch. 174, and 1868, ch. 276, of a part of the expense of altering a street, proportional to the benefit received by the assessed land from the alteration, is a "civil imposition" within the meaning of that term in the clause of the college charter of 1650, exempting from all civil impositions, taxes and rates, lands of the college not exceeding a certain annual value; and if, at the time when the land was acquired by the college, before the adoption of the Constitution of the Commonwealth, it was within the limit of the exemption, and continued within it until at the time when the Constitution was adopted, the college is entitled to continue to hold it exempted, notwithstanding that its annual value now greatly exceeds the limit, and that the college holds other lands, also exceeding the limit in value, aside from lands exempted under the general tax acts. Harvard College *v.* Boston, 104 Mass. 622 (1870).

As to the exemption of cemeteries and rights of burial:

SUPREME JUDICIAL COURT.

LAW — SEPTEMBER 10, 1876.

WOODLAWN CEMETERY v. INHABITANTS OF EVERETT.

AMES and ENDICOTT, J. J., absent.

Under the statutes of the Commonwealth, land is not "dedicated for" a cemetery, or for the burial of the dead, so as to be exempt from taxation, or "used or appropriated" to the purpose of a burial-ground so as to entitle the owner to use it for that purpose for the future without municipal permission, until it has been devoted or set apart, and some active measures taken toward preparing the ground for that purpose.

In 1850 a parcel of land was conveyed to a cemetery corporation organized under the Stat. of 1841, ch. 114, and the corporation voted to appropriate it to the purposes of a cemetery or burial-place of the dead. In 1858 the vendor foreclosed a mortgage given by the corporation, and took possession of the land. In 1868 another cemetery corporation voted to purchase the land for the purposes of its cemetery, and applied to the town in which the land lay for permission to use the land for burial purposes. The town refused to grant permission. The corporation then bought the land, and gave notice to the town that it was dedicated to the uses and purposes of a cemetery, and passed a vote that it was so dedicated. A house on the land was used by the gardner of the corporation, a hot-house for propagating plants for the cemetery was built thereon, and the land was used to pile manure, grave-markers, stone posts, wood and lumber for the cemetery, and for cutting sods for lots therein; but no part of the land was ever used for burials, or laid out into lots or permanent avenues, and no attempt was made to sell any part of it for burial purposes. *Held*, in an action to recover back a public tax levied on the land in 1870, that the land had not been so "dedicated for the burial of the dead," within the Gen. Stats., ch. 11, § 5, cl. 8, as to be exempt from taxation.

The provisions of the Stat. of 1855, ch. 257, §§ 2, 3, and of the Gen. Stats., ch. 28, § 5, that no land, except that already so used and appropriated, shall be used for burial purposes other than private tombs, unless by permission of the town, or of the mayor or aldermen of the city in which the same is situated, are constitutional, and under the Rev. Stats., ch. 2, § 6, cl. 13, and the Gen. Stats., ch. 3, § 7, cl. 13, extend to corporations for burial purposes, whose charters do not exempt them from the control of the legislature in the exercise of its police power for the security of the public health and comfort.

Under an article in a warrant for a town meeting "to see what action the town will take relative to collecting the tax on" certain land, "and pass any votes on the subject that may be deemed proper," the town voted to refer the subject matter of the article to the selectmen with full powers.

*Held*, That the selectmen had no authority, in consideration of the tax being paid, to grant the owner of the land permission to use the land for burial purposes.

GRAY, C. J. By the Rev. Stats., ch. 7, § 5, cl. 5, "all tombs and rights of burial" were exempted from taxation. The Stat. of 1841, ch. 114, authorizing ten or more persons to organize themselves as a corporation for the purpose of procuring, establishing and preparing a burial-place for the dead, provided in § 7, that "the real estate of

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such cemeteries or burial-places shall be exempt from public taxes, so long as the same shall remain dedicated for the purpose of a cemetery or burial-place for the dead."

By § 1 of the Stat. 1855, ch. 237 (which was passed and took effect on April 27, 1855), the Woodlawn Cemetery is declared to be such a corporation; and by § 4 the provision of the Stat. of 1841, ch. 114, § 7, above quoted, "shall apply to all the shares, property and effects of said corporation, so long as its real estate shall remain dedicated to the uses and purposes of a cemetery or burial-place for the dead."

By the Stat. of 1855, ch. 257 (passed three days later), § 3, "no land other than that now used or appropriated in any town in this Commonwealth for the purpose of a burial-ground shall be used by any person or persons for the burial of the dead, unless permission is granted by the town." Section 2 contains a similar provision as to cities. And by § 10 nothing in this act shall prevent inhabitants of any town from using or erecting a tomb on their own land for the exclusive use of their own family.

These provisions are substantially re-enacted in the General Statutes. By ch. 11, § 5, cl. 8, "cemeteries, tombs and rights of burial, as long as the same shall be dedicated for the burial of the dead," are exempted from taxation. And by ch. 28, § 5, "except in the case of the erection or use of a tomb on private land for the exclusive use of the family of the owner, no land other than that already so used or appropriated, shall be used for the purpose of burial, unless by permission of the town, or of the mayor and aldermen of the city in which the same is situated."

No land can be deemed to be "dedicated" for the purposes of a cemetery or burial-place for the dead, so as to be exempt from taxation, or "used or appropriated" for the purpose of a burial-ground, so as to entitle the owner to use it for that purpose for the future without municipal permission, which has not been devoted or set apart, and some active measures taken toward preparing the ground for a burial-place. A mere dedication or appropriation on paper is not enough.

It appears by the facts agreed, that, at the time of the passage of the Stat. of 1855, ch. 257, the Mount Lebanon Cemetery, which had purchased the Corbett farm, and given a mortgage back to the vendor to secure the payment of part of the purchase money, had merely voted to appropriate the same to the purposes of a cemetery or burial-place, and had not in fact so appropriated it, nor done any act upon the land toward such appropriation. At the time of the passage of the General Statutes, the vendor held the land, under a foreclosure of his mortgage for a breach of condition unaffected by any appropriation or intention to appropriate it to the purposes of a cemetery.

The Woodlawn Cemetery, the present plaintiff, acquired its title to the farm eight years afterwards. But, even if the plaintiff could avail itself of the previous holding of a farm by the Mount Lebanon Cemetery, the facts show that it has never been actually used or appropriated for a burial-ground within the meaning of the statutes.

It is expressly agreed in the case stated, that no part of this land has been used for burials, or divided off or laid out into lots or permanent avenues, and that no attempt has been made to sell it for purposes of burial. The use of a parcel of land for growing trees or shrubs, cutting turf, and depositing stone, wood and other materials, to be ultimately used in preparing and ornamenting a cemetery, is

no dedication of such land itself for the purposes of a cemetery or burial-place for the dead.

The cases cited by the learned council for the plaintiff are quite distinguishable from this. Those of *Wesleyan Academy v. Wilbraham*, 99 Mass. 599, and *Massachusetts General Hospital v. Somerville*, 101 Mass. 319, arose under the broader clause of the tax act, Gen. Stats., ch. 11, § 5, cl. 3, which exempts all real estate occupied by charitable institutions "for the purpose for which they were incorporated"; and in each case the lands held to be exempted were occupied by such an institution for the purposes specified in its charter. The extent of the decision in *Balch v. County Commissioners*, 103 Mass. 106, was, that it was no objection to the validity of an order of the county commissioners, under the Stat. of 1866, ch. 112, authorizing land to be taken for the enlargement of a burial-ground, that part of the land taken was to be used for a passage way from the burial-ground to a public street.

The charter of the plaintiff corporation did not exempt lands held by it for burial purposes from the control of the Legislature in the exercise of its police power for the security of the public health and comfort. *Brick Presbyterian Church v. New York*, 5 Cowen, 538. *Coates v. New York*, 7 Cowen, 585. *Sohier v. Trinity Church*, 109 Mass. 1, 21. *Commonwealth v. Intoxicating Liquors*, 115 Mass. 123. The provisions of the Stat. of 1855, ch. 257, §§ 2, 3, and Gen. Stats., ch. 28, § 5, are a reasonable and lawful exercise of the power of the Legislature. Although the former speaks only of lands "used by any person or persons," yet those words by the Rev. Stats., ch. 2, § 6, cl. 13, and the Gen. Stats., ch. 3, § 7, cl. 13, may, and in this case must, extend to corporations, in order to give them reasonable effect; for, at the time of their passage, very few, if any, lands in this Commonwealth were held by individuals for burial purposes other than private tombs, which are expressly excepted.

The article in the warrant under which the town meeting in 1869 was held was limited to the collection of the tax already assessed on the Corbett farm, and did not include any question of granting permission to use it for the purpose of burial. The permission granted by the committee appointed at that meeting to the plaintiff to use the land for that purpose was therefore unauthorized and of no legal effect. Even a permission from the town so to use the land would not exempt it from future taxation until it had been actually dedicated to the purposes of a burial-place.

The Corbett farm, not having been so dedicated, is not exempt from taxation under the statutes of the Commonwealth. *Judgment for the defendant*. *Woodlawn Cemetery v. Everett*, 118 Mass. 354.

The amount of real and personal estate, in addition to the meeting-house, which may be held by a religious society, is limited to so much as is necessary for its objects and no more. Pub. Stats., ch. 38, § 28.

The real estate belonging to such institutions as are mentioned in the third division of section 5 of chapter 11 of the Public Statutes, purchased with a view of removal thereto, shall not be exempt from taxation for a longer period than two years until such removal takes place. Pub. Stats., ch. 11, § 5, cl. 3.

No taxes shall be assessed in any city or town for State, county or town purposes upon the shares in the capital

stock of certain corporations, etc., mentioned in section 57, chapter 13 of the Public Statutes, for any year for which they pay the tax on their corporate franchise or property, but such shares shall be taxable for school district and parish purposes. See Pub. Stats., ch. 11, § 4; ch. 13, § 57.

Land purchased in fee or otherwise taken by a city by authority of the Legislature for the purpose of supplying the city with pure water, and used for that purpose only, is justly taken in the exercise of the right of eminent domain, and is therefore not liable to taxation. *Wayland v. County Commissioners*, 4 Gray, 500.

Citizens of this Commonwealth are not taxable here for shares of stock owned by them in national banking associations which are located in other States. See the following decision:—

The United States statute of 1864, ch. 106, § 41, makes unlawful the imposing by, or by the authority of, a State of a tax on shares owned by an inhabitant thereof in the capital stock of a national banking association organized under that statute and located in another State. *Flint v. Boston*, 99 Mass. 141 (1868).

The personal estate of an unmarried woman is liable to taxation in this Commonwealth, although, by the Constitution, women are not allowed to vote. *Wheeler v. Wall*, 6 Allen, 558 (1863).

An accumulating fund held in trust for the future benefit of an incorporated educational institution is, by force of the Pub. Stats., ch. 11, § 5, cl. 3, exempt from taxation. *Williston Seminary v. County Commissioners*, 147 Mass. 427.

Real estate, which a corporation organized for the education and religious instruction of children owns and permits to be used as purely incidental to the management of a parochial school situated on another's adjoining property, and entirely controlled and supported by others than itself, is not exempt from taxation under the Pub. Stats., ch. 11, § 5, cl. 3. *St. James Educational Institute v. Salem*, 153 Mass. 185.

A cemetery corporation was authorized by its act of incorporation to devote a limited tract of land, which was thereby exempted from taxation, to a rural cemetery, and to erect thereon a dwelling-house with suitable appendages. Afterwards it bought other land on the opposite side of a highway, upon which stood a dwelling occupied rent free by its superintendent, whose salary included this privilege, and two small barns for the horse, carts, and tools used in caring for the cemetery grounds. Subsequently a special act authorized the corporation to take and hold property by purchase or otherwise, any limitation in the original act notwithstanding, to be devoted "exclusively to the purposes connected with and appropriate to the objects of the corporation." Held, that by the latter act the purchase theretofore made was confirmed, and the exemption from taxation extended to the land so purchased. *Rural Cemetery v. County Commissioners*, 152 Mass. 408.

#### FIRE DISTRICTS.

See DISTRICT TAXES.

## HIGHWAYS.

*Highway Tax Modified.*

All laws which direct and authorize towns to vote sums for the repairs of highways and town ways, to be paid in labor and materials, and which provide for the assessment and collection thereof, are repealed.

Towns shall grant and vote such sums of money as are necessary for making and repairing highways and town ways, and such money shall be carefully and judiciously expended in making and repairing said ways by the road commissioners or by the surveyors of highways, each in his own district, when the town is divided into highway districts, and in such cases under the direction of the selectmen. Pub. Stats., ch. 52, § 3. See *Westhampton v. Searle*, 127 Mass. 502.

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## HOUSES OF PUBLIC WORSHIP.

See RELIGIOUS SOCIETIES.

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## INCOMES.

*How far Taxable.*

Section four of chapter eleven of the Public Statutes provides that the income subject to taxation shall be only so much as exceeds two thousand dollars, and which has accrued to any person during the year ending on the first day of May of the year in which the tax is assessed.

A case in the supreme court involving the question of taxation of income in part derived from stock in trade used in business and taxed, has been recently decided; and the opinion is here given in full: —

## Opinion of the Court.

AMES, J. The petitioner's complaint of the manner in which he has been taxed in the town of Medford, where he resides, is based entirely on the assumption that the income which he derives from his business as a member of the firm is derived from their "stock in trade," legally taxable and actually taxed in the city of Boston. On that ground he claims that the tax upon his income is assessed in violation of that clause of the statute which provides that "no income shall be taxed which is derived from property subject to taxation." Gen. Stats., ch. 11, § 4.

But it appears to us that the assumption on which the petitioner's case depends is a fallacy. The income from a profession, trade or employment, which is taxable under our system of laws, is an entirely different thing from the capital invested in the business or the stock of goods, in the purchase of which the whole or part of such capital may have been expended. The income meant by the statute is the income for the year, and is the result of a year's business. It is the net result of many combined influences,—the use of the capital invested, the personal labor and services of the members of the firm, the skill and ability with which they lay in or from time to time renew their stock, the carefulness and good judgment with which they sell and give credit, and the foresight and address with which they hold themselves prepared for the fluctuations and contingencies affecting the general commerce and business of the country. To express it in a more summary and comprehensive form, it is the creation of capital, industry and skill. The stock of goods that happened to be in the possession of the firm on the first day of May might be, and it is perfectly fair to assume would be, in the ordinary course of business, for the most part sold out and replaced by another stock; and in the course of the year this operation might be many times repeated. The income to which the statute refers does not mean merely the profits derived from the sale of the goods that happened to be on hand at the date of the tax, but the profits derived from the dealings and business of the firm for the year. It would not relieve the petitioner from any part of his tax, though it should be found that the goods on hand at the date of the tax had yielded no profit whatever, and had contributed absolutely nothing towards making up the sum which he reported to the assessors as his income from that business. It certainly is among possibilities that the business for the first part of the year may have been conducted, and the entire stock on hand on the first day of May may have been sold, at a loss, and yet that a favorable change in the markets at a later period may have overbalanced this loss, and made the result of the whole year a profitable one. And, even if it could be said that the "stock" of the firm taxable in Boston is meant by the statute to include the whole amount of the capital invested in its business, yet the profits of the business depend upon many elements, and are affected by many causes other than the mere use of capital. The tax which has been assessed upon the petitioner is not for an income derived from specific goods and merchandise, but for an income derived from the business of dealing commercially, in the like goods and merchandise, with such a degree of skill, judgment and good fortune that his share of the year's profits amounts to the sum which he returned as his income from business. We cannot doubt that this tax is allowed and justified by the laws of the State; and we see no reason for holding that the petitioner has been overtaxed.

Petition dismissed with costs. *Wilcox v. County Commissioners of Middlesex*, 103 Mass. 544 (1870).

The corporation counsel of the city of Boston has recently given an opinion on the taxation of incomes under Pub. Stats., ch. 11, § 4, which I have thought it advisable to copy for the consideration of assessors.

The assessors of Boston have changed their practice in this regard in conformity with this opinion.

APRIL 16, 1890.

*To the Honorable the Board of Assessors.*

GENTLEMEN:—In reply to your letter of the 14th inst., in which you submit the following questions:—

1. Are the assessors justified in allowing legal interest on capital invested, as the income of that capital; and in exempting its amount from assessment, as income derived from property subject to taxation?

2. Can the assessors legally allow a remission of the income tax upon taxable income, when the amount of such income has, during the twelve months preceding the first day of May, been invested in property which is taxable on that day, to the person to whom it has accrued? — I have to say:—

It is your duty, I think under the law, as construed and stated by the Supreme Judicial Court in the case of *Wilcox v. County Commissioners*, 103 Mass. 544, to assess a tax upon a merchant's or trader's income as well as upon the value of his stock, on or by which he is enabled (with his skill, etc.) to obtain such income, notwithstanding the provision of the statute that "no income shall be taxed which is derived from property subject to taxation." Pub. Stats., ch. 11, § 4. "The income," said the court, in said case, "from a profession, trade, or employment, which is taxable under our system of laws, is an entirely different thing from the capital invested in the business, or the stock of goods, in the purchase of which the whole or a part of such capital may have been expended." "The income meant by the statute is the income for the year, and is the result of the year's business. It is the net result of many combined influences; the use of the capital invested; the personal labor and services of the members of the firm; the skill and ability with which they lay in or from time to time renew their stock; the carefulness and good judgment with which they sell and give credit; and the foresight and address with which they hold themselves prepared for the fluctuations and contingencies affecting the general commerce and business of the country. To express it in a more summary and comprehensive form, it is the creation of capital, industry and skill."

I understand it to have been the practice of your board to deduct from the whole of such an income (in addition of course to the \$2,000) a sum which, in the opinion of the board, represents or is equal to the part of said income which is attributable to the stock itself, independently of, or separate from, the "skill and ability," or the other "influences," by which the income was produced or realized; and, inasmuch as the Legislature has furnished you with no rule or guide in this respect, I do not see why you are not justified in allowing and deducting the amount of six per cent. of the value of the stock, if that, in your judgment, is the right amount, from said income, in order to arrive at that part of the income which may be taxed, without violating that clause of the law which I have quoted. (§ 4, ch. 11, Pub. Stats.)

There is, however, no reason, as far as I can see, why you should deduct the amount of six per cent. of such value any more than the amount of four, five or seven per cent., or an amount arrived at in any other way, unless you find, of course, that the amount of six per cent. of such value is the right sum. The point is, in the practice of your board, I suppose, to deduct such an amount as is, or was, derived from the stock itself, if you can find what that amount is, so as to enable you to assess a tax only upon income derived from the skill, industry, etc., of the person to whom income "has accrued."

2. I do not see why, under the decision of the court in said case, you should abate or remit a properly assessed tax upon income, merely for the reason that, on or before the last day of April in any year, such income had been invested (and so on May 1 is found invested) in property which is on that day, May 1, taxable. I can see that this at first might appear like double taxation, but, under the definition of income given by the court in said case, I do not think that it is so. "The income meant by the statute," says the court, "is an entirely different thing from the capital invested in the business."

I think that it is something like what was formerly called sometimes a "faculty tax." It is like the old tax on income under the United States Internal Revenue system.

The tax on the income is one thing, taxable by itself, and the tax on the property is another tax on another thing; and, to some extent, each is a tax also for a different period of time; a tax on income on May 1 is a tax on income which "has accrued" (§ 4, ch. 11, Pub. Stats.), a tax on property (real estate for instance) on the same May 1 is practically, at least, though not perhaps theoretically, for a time subsequent to that.

It does not, I think, make any difference, as to its taxability, what is done with the income. It may be all used up in living expenses, or saved and invested in property, yet, as income received or "accrued," it is taxable just the same.

A tax therefore on both income and on the property in which it is subsequently invested is not double taxation, though both are assessed on the same day.

Therefore to remit the tax on income which has accrued to any person during the twelve months preceding the first day of May of any year, for the reason that he has, on or before the said first day of May, invested such income in taxable property, is, it appears to me, to give up, in such a case, the tax on income provided for in said § 4, ch. 11, Pub. Stats., which the statute declares "shall be the subject of taxation."

The law provides that "no income shall be taxed which is derived from property which is subject to taxation," but it does not say that no income shall be taxed which is subsequently invested in property which is subject to taxation. I endeavor here merely to state what the law is. The policy of taxing such income, or income so invested, is another question, and not before me.

Very respectfully yours,

J. B. RICHARDSON,

*Corporation Counsel.*

See *Melcher v. Boston*, 9 Met. 73; *Day v. Buffinton*, U. S. Circuit Court, Mass. Dist., 1870, and same case reported with the decisions of the United States Supreme Court as *The Collector v. Day*, 11 Wall. 113.

#### INHABITANT.

A man must have a domicil somewhere; can have but one; in order to lose one, must acquire another. Pur-

pose to change residence unaccompanied by actual removal does not constitute a change of domicil. The intent may be inferred from circumstances overriding declarations of the party.

If a minor leaves the domicil of his origin with the consent of his guardian, and lives for two consecutive years exclusively in another place, considering it as his home,—with no definite intent on the part of his guardian to cause him to return,—he acquires a new domicil in the latter place, and his property is taxable there.

*Kirkland v. Whately*, 4 Allen, 462.

When a life interest in personal property terminates at any time after the first of May, the life tenant or his representatives must bear the whole tax for the year.

*Holmes v. Taber*, 9 Allen, 246.

See DOMICIL.

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#### INTEREST.

#### *On Certain Taxes.*

Pub. Stats., ch. 11, § 67; ch. 13, § 9.

See DISTRICT TAXES.

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#### LIEN.

An invalid assessment is, or may be, an incumbrance or lien upon real estate. "The fact that the assessment is invalid does not remove the lien or incumbrance upon his land. The proper officers could, by proceedings in due form, correct the errors and reassess the same amount upon the land, and, if it was not paid, sell the land." *Morton*, C. J., in *Coburn v. Litchfield*, 132 Mass. 451.

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#### MACHINERY.

The (fixed) machinery of manufacturing corporations organized under the laws of this Commonwealth is taxable by the local assessors. See Pub. Stats., ch. 11, § 6, and ch. 13, §§ 38-41.

Pipes and meters of a gas light company are to be regarded as machinery.

*Commonwealth v. Lowell Gas Light Co.*, 12 Allen, 75 (1886).

Pipes of an aqueduct company are not to be regarded as machinery.

*Dudley v. Jamaica Pond Aqueduct Co.*, 100 Mass. 183 (1868).

A portable steam saw-mill temporarily located in a town on the first day of May is not taxable there as "machinery employed in any branch of manufactures" and "situated or employed" there, within the meaning of the Pub. Stats., ch. 11, § 20, cl. 2; nor can its product in timber and sawed lumber be taxed there if the owner's temporary occupancy of land with the saw-mill is the only evidence that he there occupied a manufactory, store, shop or wharf, as required by cl. 1.

*Ingram v. Cowles*, 150 Mass. 155.

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#### MONEY.

At any meeting subsequent to the annual town meeting which is held before the rate of taxation for the year is fixed, money may be voted for any lawful purpose, and the amount so voted must be included in the tax of the current year. *Freeland v. Hastings*, 10 Allen, 571.

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#### NATIONAL BANKS.

##### *Taxation of Shares in.*

Pub. Stats., ch. 13, §§ 8-19; ch. 11, § 33.

A State may tax shares held in national banks organized under U. S. Stat. of 1864, ch. 106, and may authorize the assessment of such tax in the city or town within the same State where the owner resides. *Austin v. Boston*, 14 Allen, 359 (1867).

It has been decided by the supreme court of the United States in a recent case, that the shares in national banks are taxable to the owners thereof at their market value, *without* any deduction on account of the investments of the bank in United States securities.

Under the law of this Commonwealth above given, however, a proportionate deduction must be made from the value of each share of Massachusetts national banks owned by non-residents, for real estate owned by the bank and taxed in the place where the bank is located.

The whole subject of the taxation of the shares in national banks has been fully considered by the supreme court of Massachusetts in the cases of the Providence Institution for Savings *v.* City of Boston. *Same v. F. U. Tracy*. *Pliny Jewell v. City of Boston*. *Same v. F. U. Tracy*, March, 1869. The court, after reviewing the previous deci-

sions, and considering the various objections, conclude their opinion as follows : —

"The conclusion, then, at which we arrive is, that the statute of 1868, ch. 349, does not transcend, or conflict with, the limitations expressly set forth in the acts of Congress; that practically it produces no appreciable di-proportion among tax payers as compared with each other; that the omission of the shares of non-residents from the town valuations produces no actual want of due proportion, for the reason that the general result of the taxation, supposing the statute to be held valid, is substantially identical to each tax payer with what it would be if the shares of non-residents were included in those valuations, and taxed in the same manner in all respects as the real estate of non-resident owners is taxed; and that, although in one mode of proceeding, the sum total of the valuations is less than the other, yet the aggregate of the amount to be raised under the heads of county, municipal and state taxes, is diminished in exactly the same proportion. As to the objection that it is retrospective in its operation, it seems to be enough to say that, under the acts of Congress, the property was certainly taxable in such lawful manner as the Legislature of the Commonwealth should direct. Whoever, then, on the first day of May, 1868, held such property, knew, or was bound to know, that it was taxable, like other moneyed capital as of that day, in such manner as by law might be provided." 101 Mass. 575 (1869).

In the recent case of the National Bank of Redemption *v.* the City of Boston (1888), the Supreme Court of the United States sustained the validity of our statutes in relation to the taxation of shares in national banks.

*List of Shareholders, how returned.*

Pub. Stats., ch. 13, § 11.

Authority to make the examination required by this section is also contained in the following extract from the act of Congress establishing national banks : —

*Act of Congress,  
June 3, 1864,  
§ 40.*

"*And be it further enacted,* That the president and cashier of every such association shall cause to be kept at all times a full and correct list of the names and residences of all the shareholders in the association, and the number of shares held by each, in the office where its business is transacted; and such lists shall be subject to the inspection of all the shareholders and creditors of the association and the officers authorized to assess taxes under state authority, during business hours of each day in which business may be legally transacted; and a copy of such list, on the first Monday of July in each year; verified by the oath of such president or cashier, shall be transmitted to the comptroller of the currency."

The word "person" in the Pub. Stats., ch. 11, §§ 69, 71, 72, and the statute of 1890, ch. 127, § 1, relating to the abatement of taxes, extends to a corporation.

A list, with the name of each shareholder, his residence, and the number of his shares, as required by the Pub. Stats., ch. 13, § 11, to be furnished to the assessors of taxes where a bank is located, and where, by § 8, all the shares are to be assessed, satisfies, in the case of national banks, the requirement of the Pub. Stats., ch. 11, § 72, which provide that no person shall have an abatement of taxes unless

he has filed with the assessors a list subscribed by him of his estate liable to taxation. *National Bank of Commerce v. New Bedford*, 155 Mass. 313

See EXEMPTION FROM TAXATION; RATE.

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#### **OMITTED ESTATES AND POLLS.**

*Assessors may assess.*

Pub. Stats., ch. 11, § 78; 1886, ch. 85; 1888, ch. 362; 1893, ch. 417, 130 Mass. 562; 137 Mass. 266.

*Polls and Estates assessed upon Request.*

1884, ch. 298; 1886, ch. 68; 1888, ch. 200; 1890, ch. 423; 1893, 417.

*Of Women.*

Registration of 1893, ch. 417.

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#### **PARISH TAX.**

See EXEMPTION FROM TAXATION. (Pub. Stats., ch. 11, § 4.)

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#### **PARTNERSHIP.**

Ships or vessels owned by a partnership, where assessed. See Pub. Stats., ch. 11, § 25. *Bemis v. Boston*, 14 Allen, 366 (1867).

See ASSOCIATIONS; PERSONAL PROPERTY; SHIPS OR VESSELS.

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#### **PERSONAL PROPERTY.**

Damages to which a landowner is entitled for the taking of his land for the alteration of a highway under the Stat. of 1866, ch. 174, are not a debt for which he is taxable under the Gen. Stats., ch. 11, §§ 2, 4, before they have become fixed and receivable. *Lowell v. Street Commissioners of Boston*, 106 Mass. 540.

The case of *Lowell v. Street Commissioners of Boston* has been thought by some to establish the doctrine that unliquidated debts or claims cannot be assessed. The following case, decided in 1883, corrects such an impression. The head note and the opinion of the court is here given:—

When the original assessment of a tax is valid its reassessment is void.

Under the Pub. Stats., ch. 11, § 4, providing that personal property for the purposes of taxation shall include "debts due the persons to be taxed more than they are indebted or pay interest for," a tax upon a debt due an intestate is properly assessed to the creditor, although the amount is in dispute, if it is conceded by the administrator to be as much as that taxed, and is finally compromised, by authority of the Probate Court, by the payment of a larger sum.

DEVENS, J. If the original assessment to William H. H. Dearden, in 1881, of \$12,000, for the debt due from the estate of Marble, was valid, the action of the assessors in 1882 in reassessing the tax to the defendant, the administrator of Marble, was unauthorized and void. *Oakhamb v. Hall*, 112 Mass. 535. In describing the personal property which is liable to taxation it is provided that it shall include "money at interest and other debts due the persons to be taxed more than they are indebted or pay interest for." Pub. Stats., ch. 11, § 4.

Dearden had a claim for services rendered during nineteen or twenty years to this estate, upon which he demanded \$23,000, which was finally compromised, by authority of the Probate Court, by the payment to him of \$13,100. It is contended that, as the claim was not for a definite and specific sum due by express agreement, but an unliquidated claim, the amount of which could only be ascertained by determining the value of Dearden's services, it was not a debt within the meaning of the statute relating to taxation. This construction of the statute is not satisfactory. A claim is not the less a debt because the exact amount due cannot be at the time of the assessment ascertained with mathematical accuracy. The difficulty of determining its value is not greater, probably, than that which attends the valuation of other property; and, if it be too highly rated, the same remedies exist that are found in other cases of over-valuation. So far as a debt is admitted by the debtor at any rate (as was the sum of \$12,000 assessed to Dearden), it certainly must be an appropriate subject of taxation. It cannot become otherwise because the creditor claims more than is admitted, and thus himself introduces an element of uncertainty. The words "other debts due the persons to be taxed," when used in connection with the words "more than they are indebted or pay interest for," contemplate an estimate of the financial position of the person to be taxed before deciding that he is liable as a creditor to this tax and also the extent to which he is thus liable.

The plaintiff relies upon *Lowell v. Street Commissioners*, 106 Mass. 540, where it is held that a claim for land damages, when a road has been laid out and the right to damages has accrued, is not taxable to the owner until the damages become fixed and receivable as his absolute personal property. The reason of this is that until that time the true amount of the conversion of the real estate of the owner into personal cannot be ascertained, as it may be subjected to the repayment by way of an assessment for expenses of the whole amount awarded as damages. As the land damages might thus be absorbed entirely there could be no debt until it was ascertained that this would not happen.

In the case at bar there was no dispute that a debt was due; all that was disputed was the amount, and that was conceded to be as much as was assessed to Dearden. The tax upon \$12,000 was therefore rightly assessed to William H. H. Dearden.

The assessment to George R. Dearden requires no separate consideration. It was rightly assessed for the reasons already given. Judgment affirmed. *Deane v. Hathaway*, 136 Mass. 129.

## Laws Regulating Taxation.

Assessors of taxes are not bound by a list of property brought in for assessment and sworn to, if it appears from an examination of the person who brings it in that it is not true. *Hall v. Middlesex*, 10 Allen, 100 (1865). See *Moors v. Boston*, 134 Mass. 431.

United States internal revenue stamps are not subject to State or local taxation as property, nor as "stock in trade." *Palfrey v. Boston*, 101 Mass. 329 (1869).

Goods imported from a foreign country, upon which the duties and charges at the custom house have been paid, are not subject to State taxation whilst remaining in the original cases, unbroken and unsold, in the hands of the importer, whether the tax be imposed upon the goods as imports or upon the goods as part of the general property of the citizens of the State, which is subjected to an *ad valorem* tax.

Goods imported do not lose their character as imports and become incorporated into the mass of property of the State until they have passed from the control of the importer or been broken up by him from their original cases. *Low et al. v. Austin*, U. S. S. C., 1872.

Manufacturing corporations are not taxable for their personal property in the town where their manufactory is established. *Salem Iron Co. v. Danvers*, 10 Mass. 514. *Amesbury Woollen Co. v. Amesbury*, 17 Mass. 461. Otherwise as to their real estate. *Goodell Manufacturing Co. v. Trask*, 11 Pick. 514. And their fixed machinery. *Boston and Sandwich Glass Co. v. Boston*, 4 Met. 181. *Dunnell Manufacturing Co. v. Pawtucket*, 7 Gray, 277.

An incorporated street railroad company is not taxable for horses or other personal property used in and necessary to the prosecution of its business. *Middlesex Railroad v. Charlestown*, 8 Allen, 330 (1864).

An aqueduct company is not taxable for its pipes, as being machinery, under 1865, ch. 283. *Dudley v. Jamaica Pond Aqueduct Co.*, 100 Mass. 183 (1868). Otherwise as to a gas light company. *Commonwealth v. Lowell Gas Light Co.*, 12 Allen, 75 (1866).

If a foreign corporation has a place of business in this Commonwealth, where it has personal property, consisting of office furniture and fixtures, and where it keeps personal property pledged to it as collateral security for money lent, which it sells when not redeemed, such place of business is a "shop" and the property so used and pledged is "stock in trade," which is taxable to it under the Gen. Stats., ch. 11, § 12, cl. 1 (now Pub. Stats., ch. 11, § 20, cl. 1). *Boston Loan Co. v. Boston*, 137 Mass. 332.

The personal estate of an unmarried woman is liable to taxation in this Commonwealth, although, by the Constitution, women are not allowed to vote. *Wheeler v. Wall*, 6 Allen, 558 (1863).

The interest of an inhabitant of this Commonwealth as a partner in the property of a firm established and carrying on business in another State is taxable here. *Bemis v. Boston*, 14 Allen, 366 (1867).

The owner of a farm situated in two towns, his house being in one and his barn in the other, is taxable in the latter for his horses, which are habitually kept, fed, and watered in the barn, although used on the entire farm, under the Pub. Stats., ch. 11, § 20, cl. 3, which provide that "horses . . . kept throughout the year in places other than those where the owners reside . . . shall be assessed to the owners in the places where they are kept." *Pierce v. Eddy*, 152 Mass. 594.

The following is an opinion in a case of taxation of intoxicating liquors, by which it appears that the owners are liable to taxation, although the sale is illegal:—

**CHAPMAN, C. J.** The liquors which were taxed were property, and the law protected them as such. An action might be maintained by the owner against one who should tortiously take them from him. *Ingalls v. Baker*, 13 Allen, 449. They were not a nuisance, unless kept for sale illegally. Gen. Stats., ch. 86, § 60. The petitioner does not allege that he kept them for sale. As personal property they were taxable by Gen. Stats., ch. 11, § 42. Petition dismissed. *Dunbar v. Boston*, 101 Mass. 317 (1869).

The following report is of interest, as bearing upon the question of the *place of business* of a *copartnership* and the *taxation of its personal property*.

"Persons not residing in a town, and having therein no store, shop or wharf, are not subject to taxation there by reason of there hiring a yard in which they keep and sometimes sell lumber, and have put up a small building for the convenience of men employed by them." *Loud v. Charlestown*, 103 Mass. 278 (1870).

A dealer in ice had, in a town other than that in which he resided and had his office, a storehouse, in which the ice which constituted his stock in trade was kept, and from which it was delivered on contracts principally made elsewhere. *Held*, that the building in which the ice was kept was not a "store" within the Gen. Stats., ch. 11, § 12, cl. 1 (now Pub. Stats., ch. 11, § 20, cl. 1); and that the ice was not taxable to him in that town. The cutting of ice on the surface of a pond, and storing the pieces so cut in a building, is not a "manufacture," so that the machinery employed therein is taxable to the owner, under the Pub. Stats., ch. 11, § 20, cl. 2. *Hittinger v. Westford*, 135 Mass. 258.

"Stock in trade" must be domiciled in the place where the owner has his "store" or "shop," in order to be taxable to him there, under Pub. Stats., ch. 11, § 20, cl. 1. *Hittinger v. Boston*, 139 Mass. 17.

A foreign corporation had a general office in B. and a store in L., both in this Commonwealth. On May 1 it had sewing machines in L. in the possession of persons under contracts, by the terms of which each person agreed to pay as rent a certain sum monthly until a certain other sum should be paid, and then to return the machine to the company, or to purchase the machine for one cent. These machines were delivered from the store in L., and the contracts were immediately sent to the office in B., which took charge of and enforced them. The employees in the store in L. had no further connection with the machines after delivery except to make collections, and to remit them to the office in B. If the persons having the machines did not pay under their contracts, which seldom happened, the employees in L., acting under general directions from the office in B., took possession of the machines. *Held*, under Pub. Stats., ch. 11, § 20, that the machines were properly taxable to the corporation in L. as "stock in trade." *Singer Manufacturing Co. v. County Commissioners of Essex*, 139 Mass. 266.

A firm, one member of which resided in B. and the other in N., had an office in B. where its books were kept, and in which it also kept a small stock of goods as samples, and for the accommodation of retail customers. It had three factories where its goods were made, one in B., one in N. and one in W. The goods made at the factory in W. were put into an adjacent storehouse, and there kept until sold.

Nearly all the sales were made on orders received at the office in B., and one of the partners went each day to one or another of the factories, and shipped the goods from those there stored direct to the customers. *Held*, that the firm had a "place of business" in W., and the goods made and stored there were "employed" in its business, and were taxable there, under the Pub. Stats., ch. 11, § 24. *Barker v. Watertown*, 137 Mass. 227.

The Stat. of 1849, ch. 96, made the trustees of certain funds given for charitable purposes a corporation; and provided, in § 4, that "no part of the funds aforesaid shall, by the operation of this act, be exempted from taxation, but, for the purpose of taxation, said funds shall be equally apportioned among" certain towns named. *Held*, that the funds in question were subject to the general laws, passed from time to time, relating to the taxation of property, as they would have been if the trustees had remained unincorporated. *Held*, also, that the statute did not authorize a franchise tax. *Held*, also, that the Pub. Stats., ch. 13, § 52, providing that property held in trust by the class of corporations therein named shall, for the purposes of taxation, be governed by the provisions of their charters, and the Pub. Stats., ch. 11, § 38, requiring a list of taxable property to be given to the assessors, did not apply to this corporation. *Greenfield v. County Commissioners*, 135 Mass. 566.

Bonds issued by a railroad corporation, which is managed by its stockholders for the purposes of private gain, are not "public stocks and securities," within the meaning of the Pub. Stats., ch. 11, § 4, but are "debts due," and the money invested in them is "money at interest," from which the owner is entitled, in determining the amount for which his personal estate shall be taxed, under that statute, to have money upon which he is paying interest deducted, although the corporation is established by an act of Congress of the United States, and large grants of land have been made to it by Congress to aid in its construction for public purposes, and the bonds are secured by a mortgage on its road, and the mortgage is, as required by law, filed and recorded in the office of the Secretary of the Interior, and the corporation is to some extent subject to government control. *Hale v. County Commissioners*, 137 Mass. 111.

But see Stat. 1888, ch. 363, which provides that all railroad bonds shall be taxable in connection with public stocks and securities; that is, without deduction for debts due by the holder.

Money deposited in a national bank, and bearing no interest, is liable to be taxed to the depositor, under the Pub. Stats., ch. 11, § 4, without any deduction on account of debts due from him. *Gray v. Street Commissioners of Boston*, 138 Mass. 414.

If a person buys a parcel of land at a tax collector's sale, and receives a deed thereof, which is recorded before the first day of May and no other transfer of the parcel is made until after that date, he is the "person appearing of record as owner" within the Pub. Stats., ch. 11, § 13, and a tax upon the land is properly assessed to him, although the former owner had on said first day of May a right to redeem the land. *Butler v. Stark*, 139 Mass. 19.

And the following decides that a citizen of one town, owning hotel furniture in a hotel in another town, is taxable therefor in the place of his residence, and not in the place where the hotel is situated.

SUPREME JUDICIAL COURT.

JANUARY, 1872.

CITY OF CHARLESTOWN v. COUNTY COMMISSIONERS OF MIDDLESEX.

## Opinion of the Court.

MORTON, J. This is a petition for a writ of *certiorari* to quash the proceedings of the county commissioners upon a complaint by Daniel Chamberlin for the abatement of a tax assessed upon him by the city of Charlestown in the year 1869. The respondents, as a part of their answer, file a full copy of their record of proceedings in the premises. It appears that said Chamberlin, in May, 1869, was a resident of Boston, and was lessee of the Waverley House in Charlestown, which he was carrying on as a hotel, and that he owned the furniture of said hotel. Within the time required by the notice of the assessors, namely, on June 9, 1869, he filed with the assessors a list of his estate liable to taxation, subscribed and sworn to by him, which list included the furniture of the hotel, valued at \$62,000, and other personal property valued at \$3,000.

The assessors did not accept this valuation; but assessed a tax upon the said Chamberlin for personal property to the value of \$75,000.

He thereupon duly applied to the assessors for an abatement of his tax; and they abated the tax upon \$10,000 and refused to make any further abatement. Within one month after such refusal he filed his complaint, in the nature of an appeal, with the county commissioners, who, after due notice and a hearing, abated the tax assessed upon the furniture of the hotel.

The first and most important question in the case is, whether Mr. Chamberlin was taxable in Charlestown upon the furniture owned by him and used in carrying on the hotel.

He was an inhabitant of Boston. The general position of the statute is, that "all personal estate within or without this State shall be assessed to the owner in the city or town where he is an inhabitant on the first day of May." Gen. Stats., ch 11, § 12.

Mr. Chamberlin, therefore, was taxable for this furniture in Boston, unless the case is within one of the exceptions to this general provision. The petitioners claim that it falls within the first exception, which is as follows: "All goods, wares, merchandise and other stock in trade (except ships or vessels owned by a copartnership), including stock employed in the business of manufacturing or of the mechanic arts, in cities and towns within the State other than where the owners reside, whether such owners reside within or without this State, shall be taxed in those places where the owners hire or occupy manufactories, stores, shops or wharves, whether such property is within such places or elsewhere, on the first day of May of the year when the tax is made."

To make a person taxable, under this provision, in a town of which he is not an inhabitant, it must appear that he hires or occupies a manufactory, store, shop or wharf in such town. Unless he does, he is not taxable in such town for any goods or merchandise he may have there, however large in value, but is liable to taxation upon such goods in the town of which he is an inhabitant. *Huckings v. Boston*, 4 Cush. 543. *Loud v. Charlestown*, 103 Mass 278.

We think this case does not fall within this provision. Mr. Chamberlin hired and carried on a hotel in Charlestown; but it would be a distortion of language to say that his hotel was either a manufactory, shop, store or wharf. Upon no reasonable construction of the

language of the statute relied upon by the petitioners can the case be held to be within its provisions. The commissioners correctly decided that he was not taxable in Charlestown upon the furniture used in the hotel.

But the petitioners contend that neither the assessors nor the commissioners had authority to abate the tax, because Chamberlin included the furniture in his sworn list as property liable to taxation. We find in the statutes no such limitation of the power of the commissioners or assessors. If the tax payer makes it appear that he is taxed at more than his just proportion they are to make a reasonable abatement. Gen. Stats., ch. 11, §§ 43-46.

We can see no reasons of justice or public policy why, if he, by a mistake of his rights, returns to the assessors, as liable to taxation, property which is by law exempt, he should be thereby estopped to claim a reasonable abatement and compelled to pay more than his just proportion of the taxes. This question was substantially decided in *Dunnell Manufacturing Co. v. Pawtucket*, 7 Gray, 277.

The evidence offered in this court to the effect that said Chamberlin devoted a part of the hotel to the sale of cigars and liquors to the public as well as the guests of the hotel, and for a public billiard table, was inadmissible. They cannot by evidence, *aliunde*, control the records of the commissioners. *Mendon v. County Commissioners*, 15 Allen, 13.

The petitioners further contend that the commissioners erred in awarding that the city of Charlestown pay the costs of the proceedings to be taxed by the commissioners.

It was decided in *Lowell v. Commissioners of Middlesex*, 3 Allen, 546, that the commissioners have no power to award costs in such cases.

This part of their judgment, therefore, was erroneous; and, for the sole purpose of correcting this error, a writ of *certiorari* may issue. *Charlestown v. County Commissioners of Middlesex*, 109 Mass. 270.

Stat. of 1882, ch. 218, authorizes county commissioners to award costs. See also 1890, ch. 127.

#### *Personal Estate of Deceased Persons.*

Pub. Stats., ch. 11, §§ 20, 21, 44.

See COLLECTORS; DECEASED PERSONS. *Hardy v. Yarmouth*, 6 Allen, 277. *Carleton v. Ashburnham*, 102 Mass. 348. *Wood v. Torrey*, 97 Mass. 321, for the old law.

#### POLLS.

Pub. Stats., ch. 11, §§ 1, 11, 48, 93; 1884, ch. 298; 1885, ch. 271; 1886, ch. 68; 1888, ch. 200; 1893, ch. 417.

State and county taxes are to be assessed upon polls; the tax for each is limited to one dollar upon each poll; the excess above said amount, and in every case the whole amount assessed for other purposes in any year, is to be apportioned upon property. See § 48, ch. 11.

## POOR DEBTOR'S OATH.

Pub. Stats., ch. 12, § 16.

## PROTEST.

A protest to be valid as a basis for a suit at law to recover a tax illegally assessed, must be in writing "signed by the person paying the same," filed with or delivered to the collector before or at the time of payment; and an action to recover the amount must be "brought by the person assessed for the tax within three months after such payment." Stat. 1888, ch. 390, § 94; *Knowles v. Boston*, 129 Mass. 551.

## RATE.

In cities and towns in which any national bank is located. See Pub. Stats., ch. 11, § 33; 1887, ch. 226.

See NATIONAL BANKS.

## REASSESSMENT OF TAXES.

Pub. Stats., ch. 11, §§ 79, 80. See cases cited in margin and 136 Mass. 132.

See TAXES.

## REAL ESTATE.

*Assessment to Owners Unknown.*

Assessors, knowing who is in possession of real estate, cannot legally assess its tax "on owners unknown"; neither can they make such an assessment, knowing or having the means of knowing in whom the record title is. *Oakham v. Hall*, 112 Mass. 535.

The question as to who is liable to pay the tax on land sold and conveyed on the first day of May, or immediately thereafter, is settled by the following decisions of our Supreme Court:—

CHAPMAN, C. J. On May 1, 1868, when the taxes were assessed, the land became liable for their payment. It is true that payment was not to be made till the tax bills should be made out and put into the hands of the collector, and all the necessary preliminary steps should be taken on his part. It is also true that they might be collected otherwise than by a sale of the land; and thus its liability might terminate, or it might cease by lapse of time. But they have not been paid otherwise, and the purchaser has been compelled to pay them. He was obliged to pay them in order to relieve the land

from a liability to which it was subject when he took his conveyance with the covenant against encumbrances. These taxes had all the characteristics of an encumbrance. What constituted the encumbrance was the present paramount right of the city to hold the land subject to the payment of the taxes already assessed, if they should not be paid otherwise. It is none the less an encumbrance, because the taxes might be collected otherwise. It might as well be contended that a mortgage to secure a note given by a third person was not an encumbrance, because the note might be collected of the maker.

It is contended that this is no more an encumbrance than the liability of the land for the taxes that may be assessed in future years. But the obvious difference is, that there can be no liability for an assessment which does not exist, and the covenant relates merely to existing encumbrance. *Cochran v. Guild*, 106 Mass. 30.

SUPREME JUDICIAL COURT.

LAW — OCTOBER, 1872.

**WILLIAM H. HILL, JR., v. JOSIAH BACON.**

Opinion of the Court.

Bacon sold land to Hill by a deed dated April 30, but acknowledged and recorded May 1. Hill paid the tax for the year under protest, and sued to recover the amount paid. The opinion of the court is by

WELLS, J. Taxes are assessed as of the first day of May in each year; and on real estate, "to the person who is either the owner or in possession thereof on the first day of May." Gen. Stats., ch. 11, § 8. They "constitute a lien thereon for two years after they are committed to the collector." Gen. Stats., ch 12, § 22. To be effectual, this lien must relate back to the first day of May. Such, doubtless, was the intent, and should be the construction, of this provision of law; although, practically, the tax is not assessed until some weeks or perhaps months later.

It is agreed that the defendant "was the owner and in possession" of the land in question on the first day of May, 1869. The tax, then, was lawfully assessed to him, and constituted a lien upon the land. There is no point of time, less than the day, at which the tax can be regarded as laid. It will be sustained by ownership or possession during any part of the day. It would have been equally valid if it had been assessed to the plaintiff, who became owner on that day.

The covenant against encumbrances relates to the present condition of the title. Whether a lien, to be created by the laying of a tax, subsequent in actual imposition, but by law relating back to the first day of May, constitutes a breach of this covenant in a deed dated April 30, and delivered May 1, we need not decide, because we think it is clearly a breach of the covenant to warrant and defend; and, upon the agreed facts, if it is held to be a breach of either covenant, the plaintiff is entitled to the same measure of damages in one case as in the other. The covenant to warrant and defend is prospective. The tax being lawfully assessed to the defendant, constituting a lien upon the land, and that lien being enforced by a sale in due form, the plaintiff was obliged to buy in the superior title to protect himself from eviction. The outstanding title or right being derived through the defendant, there was a literal breach of his covenant to warrant and defend. 2 Greenl. Ev., § 244. 2 Wash. Real. Prop., 666. *Curtis v. Deering*, 12 Maine, 499.

Invalid assessment a lien on real estate. 132 Mass. 451. See LIEN. The warrantor is bound by the literal purport of his covenant. Judgment for the plaintiff. *Hill v. Bacon*, 110 Mass. 387.

A tax on real estate may be assessed to a person who appears by the records to be the owner, if the municipality assessing the tax has no notice that he has previously conveyed the land. *Tucker v. Deshon and another*, 129 Mass. 559.

Real estate in the possession of a mortgagee, the equity of redemption of which has been conveyed, was improperly taxed to the mortgagor. It was afterwards sold and conveyed under a power of sale in a second mortgage, and the tax was subsequently reassessed under the Gen. Stats., ch. 11, § 53, to the holder of the equity, based upon a valuation other than that of the year for which the tax was originally assessed. *Held*, that the reassessment was invalid.

If land is sold for a tax improperly assessed, the true owner, if in possession, may maintain a bill in equity against the purchaser at the tax sale to quiet his title. *Davis v. Boston*, 129 Mass. 377 (1880).

The owner of a parcel of land died, leaving a widow and an heir at law. Dower was not assigned to the widow, and she, acting as agent for the heir at law, let the land to a tenant. While the tenant was in sole occupation of the land, a tax upon it was assessed to the widow. *Held*, that the widow was not the person "in possession," within the Pub. Stats., ch. 11, § 13; and that the assessment was invalid. *Lynde v. Brown*, 143 Mass. 337.

An interesting decision as to the taxation of land flowed by water and the water-power is the following: —

WELLS, J. The petitioner was liable to be taxed in Windsor for his land lying within that town, and structures upon it. He asks for an abatement on the ground of over-estimate in two respects: 1st, in the number of acres of land; 2d, in the valuation of land and structures.

1. As to the over-estimate in the number of acres: It appears that the list filed by the petitioner gave the amount of land in one parcel as forty-one acres, but failed to give the number of acres in two other parcels, which were entirely flowed by the pond.

The assessors called the whole sixty-five acres. The agreed facts state the quantity of land as follows: "an area of about fifty-five acres, more or less." We do not think this makes out a case for the petitioner to have an abatement on that ground.

2. The valuation by the assessors was for dam and land, sixty-five acres, \$15,000 aggregate value. The land cost \$2,581, and the dam \$83,770. About half of the land is covered by the pond. The agreed facts state that the land, "while covered by water," and the dam, "independent of its use for the purposes of a reservoir," are of only nominal value. Upon this statement the petitioner contends that any valuation and tax upon the land so covered, and the dam so used, must necessarily be made and levied upon the water-power. The case of *Boston Manufacturing Co. v. Newton*, 22 Pick. 22, decides that water-power is taxable only as incident to land; and that when used, it is to be regarded as incident to the mills to which it is applied, and not to the dam and pond by which it is created. But it does not decide that the land and structures, by which it is created, are not taxable for their value as such.

The decision in *Lowell v. County Commissioners*, 6 Allen, 181, is that canals used for supplying water-power to mills, and "land

adjoining and bordering on the canal, with gate-houses, feeders and mason work," may be taxed upon an estimate which includes the value of unappropriated water-power. So far as the opinion in that case implies that the land and structures occupied for canal purposes might not be taxable at all, if the estimates for the taxes upon the mills had included so large a valuation of water-power as to exhaust the whole productive capacity of the land and structures by which it was furnished, it must be understood with a view to the fact that both subjects of taxation were within the same city. If, in assessing the tax upon the mills, the water-power had been estimated in such a manner as to include the entire value of the land and structures by means of which it was supplied, it would manifestly be double taxation to include them again in the assessment as a separate subject of valuation and tax. There was no diversity of right or jurisdiction in that case which made it necessary to determine whether the canals and lands adjoining them could be taxed to the mill-owners as water-power against a conflicting interest.

By the Gen. Stats., ch. 11, § 3, "real estate for the purposes of taxation shall include all lands within this State, and all buildings and other things erected on or affixed to the same." No case has been cited which gives countenance to the position that land and erections upon lands ceased to be separately taxable as real estate, because of their appropriation and use for the purpose of creating and supplying water-power for mills. The value of such structures consists, mainly, it is true, in the adaptation to the production and application of water-power for mills.

But they are capable of being estimated by a reasonable valuation, not dependent upon nor including the worth of the water-power with which they are connected.

Such a valuation is not unlike that which is required to be made of the mills themselves, including the water-wheels, by the Stat. of 1861, ch. 167, § 2. This statute requires "such value to be exclusive of land and water-power, and of the machinery used in said buildings."

It would not be supposed that it was intended, by this provision, that the buildings should be estimated according to their value, independent of their use by the application of water-power, or to the value of their materials for removal.

The same statute requires a separate description and valuation of "each and every lot of land assessed." The manner of assessment in detail, provided for by this statute, favors the position of the respondents.

We are satisfied that the land in this case, and the dam erected upon it, are taxable as real estate in Windsor; that the valuation should be made, not subject to the use to which they are for the time appropriated, nor independently of that use, in any sense which excludes it from consideration as a means by which their value is made available, but in the same manner as the mills and water-wheel are to be valued. *Boston Water-Power Company v. Boston*, 9 Met. 199, 204. No part of the value of the water-power, as such, is to be included in the valuation of either; but the capacity of the property for valuable use is not to be excluded from consideration for the reason that it is so limited in the purpose or mode of its use as to be only of nominal value independently of its use in a particular mode or for a particular purpose.

The valuation, in the present case, is such as to give no ground for the supposition that it included any part or value of the water-

power; or that it is other than a fair and reasonable estimate of the land and structures erected upon it. The tax, therefore, is rightly assessed, and the petition is accordingly dismissed. *Pingree v. Berkshire*, 102 Mass. 76 (1869).

Since the above decision, the following law has been enacted:—

All reservoirs of water, with the dams connected therewith and the lands under the same, used to maintain a uniform supply of water for mill-power, shall be assessed for the purpose of taxation in the town or towns where located, at a valuation not exceeding a fair valuation of land of like quality in the immediate vicinity. 1872, 306, § 1.

This act has been declared unconstitutional. Consequently the law remains as it was prior to its passage.

SUPREME JUDICIAL COURT.

LAW — SEPTEMBER 25, 1875.

INHABITANTS OF CHESHIRE v. COUNTY COMMISSIONERS OF BERKSHIRE.

BERKSHIRE, SEPT. 15-25, 1875.

AMES and DEVENS, J. J., absent.

In 1874 the Adams and Cheshire Reservoir Company — the owner of a reservoir of water, with the land under the same and dams connected therewith, used to maintain a uniform supply of water for mill-power, and liable to taxation therefor in the town of Cheshire — was assessed a tax of nine hundred dollars upon a valuation of sixty thousand dollars. In determining this valuation, the assessors made what was in their judgment a fair cash valuation of the property, and did not assess the tax as required by the Stat. of 1872, ch. 306. The reservoir company then applied to the county commissioners for an abatement of the tax, who decided that the assessors should have valued the property as provided in said statute, and abated the tax accordingly.

WELLS, J. This case is presented to the court solely upon the question of the construction and validity of the Stat. of 1872, ch. 306, which is as follows: "All reservoirs of water, with the dams connected therewith and the lands under the same, used to maintain a uniform supply of water for mill-power, shall be assessed for the purposes of taxation in the town or towns where located, at a valuation not exceeding a fair valuation of land of like quality in the immediate vicinity."

We are unable to construe this statute as requiring merely that the value of land and structures, appropriated for the purpose of creating and applying water-power for mills, should be apportioned between different towns, in each of which part only of the works is situated, so that the land alone should be taxed in the town where it is situated, and the artificial structures or appliances for creating the power should be taken as included in the estimate of the value of the power itself, and taxed in the same town as the site upon which it is applied and used; nor can we regard it in purpose and effect as providing, by way of classification merely, that such structures and appliances

shall be estimated only as incident to and included in the value of the power at the site where it is used and valued, wherever located. *Lowell v. County Commissioners*, 6 Allen, 131. *Pingree v. County Commissioners*, 102 Mass. 76. The terms in which the act is framed forbid such a construction. It makes the town in which the reservoir is situated the place, and the only place, where any tax can be laid on account of the value, as property, of the entire reservoir; thereby excluding it from estimation as incident to, or as an element of value in, that capacity of use which is taxable as power in connection with the site upon which it is applied to the working of mills. It does not purport to have for its object the apportionment of the rights of taxation between different towns. Its terms apply equally to reservoirs which are in the same town with the mills for whose supply they are maintained, as to those which are in other towns; and whether held by the same parties and in the same right as the mills and mill-site, or by an entirely separate and independent ownership. It is not a statute of exemption. Neither its title nor its provisions indicate any consideration of public service, or relief required by the public welfare, which might justify such an exemption, or lead to the supposition that it was so intended; nor is any such consideration to be implied from the character and use of the property. We need not determine, therefore, whether, if it were to be construed as an exemption, it could be sustained as such.

Regarding the statute, then, as declaring the entire reservoir to be a distinct and separate subject of valuation for the purposes of general taxation, and requiring that valuation to be made upon a basis which excludes all increase of value by reason of the improvements or additions made thereon for the construction and maintenance of the reservoir, however valuable or costly, the question is, whether it conflicts with the constitutional provision which relates to the exercise of the taxing power by the Legislature.

That provision requires that all taxes levied under its authority be "proportional and reasonable," and forbids their imposition upon one class of persons or property at a different rate from that which is applied to other classes, whether that discrimination is effected directly in the assessment, or indirectly through arbitrary and unequal methods of valuation. *Portland Bank v. Apthorp*, 12 Mass. 252. *Commonwealth v. People's Savings Bank*, 5 Allen, 428, 431. *Commonwealth v. Hamilton Manufacturing Co.*, 12 Allen, 298, 301. Practically it is impossible to secure exact equality or proportion in the imposition of taxes or distribution of public burdens requiring taxation. The test, in all legislative enactments affecting taxation, is that their aim be towards that result, by approximation at least. No enactment respecting taxation under this clause conforms to its provisions, if it directly and necessarily tends to disproportion in the assessment. It appears to us that the practical operation of this statute, construed as we have found ourselves compelled to construe its terms, is directly and necessarily to produce disproportion, to a greater or less extent, in the levy of all taxes based upon valuations which includes such property as that to which it applies. That being its necessary tendency, it is immaterial whether the effect upon the general distribution of the tax be great or small; it is equally in violation of the Constitution, and therefore not within the legitimate authority of the Legislature. Consequently the abatement ordered by the county commissioners was erroneously made, and the *writ of certiorari must be issued*. *Cheshire v. County Commissioners*, 118 Mass. 386.

SUPREME JUDICIAL COURT.

LAW — NOVEMBER, 1878.

CITY OF FALL RIVER *v.* COUNTY COMMISSIONERS OF BRISTOL.

Petition for a writ of *certiorari* to quash the proceedings of the county commissioners of Bristol in abating a tax assessed by the petitioner in 1876 upon the Watuppa Reservoir Company. Hearing upon the petition and answer, before Ames, J., who reserved the case for the consideration of the full court. The facts appear in the opinion.

M. Reed, for the petitioner.

J. M. Morton, Jr., for the respondents.

MORTON, J. It appears from the return of the county commissioners that the tax in question was assessed upon a reservoir company under the Stat. of 1872, ch. 306, in the terms following: "Reservoir of water used to maintain a uniform supply of water for mill purposes, with the dam connected therewith, and the land under the same," and that this was the only tax assessed by the city of Fall River upon said reservoir company during the year 1876. In *Cheshire v. County Commissioners*, 118 Mass. 386, it was held that this statute was unconstitutional and void. It necessarily follows that the tax in question was illegal.

The claim of the petitioner that this tax may be upheld because the reservoir company was taxable for a part of its property, cannot be sustained. One sufficient answer is, that it had no property which was liable to taxation. It did not own the dam, nor any of the land covered by the pond. The dam was built at the outlet of the Watuppa ponds, which were great ponds, on the land of the Troy Cotton and Woolen Manufactory; and the only interest in any land which the reservoir company had was the right to flow the lands surrounding the ponds to a point two feet above the old dam. This is merely an easement in the land, which cannot be taxed independently. It forms part of the water-power which is taxed in connection with the mills, as enhancing their value.

The reservoir company, being a corporation having a capital stock divided into shares, was not liable to be taxed for the cash in its treasury, that being personal property which enters into the value of the shares. *Boston and Sandwich Glass Co. v. Boston*, 4 Met. 181.

For these reasons, without discussing others, we are of opinion that the decision of the commissioners abating the tax was correct. *Petition dismissed*. *Fall River v. County Commissioners of Bristol*, 125 Mass. 567.

A water company acquired title in and to the waters of a pond, and to a permanent dam and sluiceway connected therewith, and took possession thereof. *Held*, that, even if the title was to an easement only, a tax was properly assessed to it for the dam and sluiceway as real estate, and that its sole remedy for any excess was by an application for an abatement. *Flax Pond Water Company v. City of Lynn*, 147 Mass. 31.

*Buildings.*

Pub. Stats., ch. 11, § 3. The case of *Flanders v. Cross*, 10 Cush. 514, leaves in doubt the question as to whether a wooden building belonging to A, but standing on land of B, is to be considered for the purpose of taxation as

real or as personal estate. Since that decision a case in point has been determined by the court as follows:—

**THOMAS MILLIGAN v. OTIS DRURY, TRUSTEE.**

SUFFOLK, February 23, 1881.

A building resting on sills upon the ground is taxable as real estate under the Gen. Stats., ch. 11, § 3, although by agreement between a lessor and lessee of the land the latter has the right to remove the building at the expiration of the lease. The opinion of the court follows:—

MORTON, J. The lease to the plaintiff provides that he shall pay the rent stipulated therein "and all taxes and duties levied and to be levied thereon during the term." It also provides that, upon the payment of rent and taxes aforementioned upon the said premises, "said lessee shall have the privilege or right to remove any and all buildings erected by himself upon said premises at the expiration of the aforesaid lease."

Under these provisions the plaintiff has no right to remove the buildings erected by him, and to treat them as personal property, except upon payment of all the rent and taxes due under the lease. In other words, the payment by him of the rent and taxes is a condition precedent to his right to sever the buildings, and make them his personal property.

It appears by the statement of facts, that the assessors of Boston in the years 1877 and 1878 assessed to the plaintiff, as the lessee and occupant, the land and buildings as real estate. The statute provides that "real estate for the purposes of taxation shall include all lands within this State, and all buildings and other things erected on or affixed to the same." Gen. Stats., ch. 11, § 3.

The assessors were not obliged to inquire into the private contracts between the parties, but had the right to do as they did, and assess together as real estate the land and the buildings affixed thereto. They having done so, it was the duty of the plaintiff under the lease to pay the taxes. The defendant was in no fault, and he had no remedy, except to pay the taxes, or to protect himself by buying in the estate at the tax sale.

Upon the facts agreed, therefore, it appears that the plaintiff, having neglected and refused to pay the taxes, has failed to perform the condition upon which alone he was to have the right to remove the buildings erected by him upon the leased premises. The defendant's refusal to permit the plaintiff to remove them was, therefore, not a conversion for which he can be held liable in this action.

Judgment for defendant affirmed. *Milligan v. Drury*, 130 Mass. 428.

A building affixed to land cannot be taxed as "real estate" apart from the land to which it is attached.

If such a building is owned separately from the land as personal property, it cannot be taxed as real estate to the owner so as to create a lien; and if such owner before paying the tax sells it, the purchaser will not succeed to any personal liability of the owner to pay the tax, but upon paying it after a protest in writing may recover it back. *McGee v. City of Salem*, 149 Mass. 238.

The owner of a parcel of land died, leaving a widow and an heir-at-law. Dower was not assigned to the widow, and she, acting as agent for the heir-at-law, let the land to a tenant. While the tenant

was in sole occupation of the land a tax upon it was assessed to the widow. *Held*, that the widow was not the person "in possession" within the Pub. Stats., ch. 11, § 13; and that the assessment was invalid. *Lynde v. Brown*, 143 Mass. 337.

Taxes on real estate must be assessed, under the Pub. Stats., ch. 11, § 13, to the living owners of real estate; and an assessment to a person deceased, who owned such real estate at his death, is illegal and void. *Sawyer v. Mackie*, 149 Mass. 269.

A parsonage, erected for a religious society on its land, and near its church edifice, for the use of its ministers as a dwelling-house exclusively, free of rent, is not, under the Pub. Stats., ch. 11, § 5, cl. 3, 7, exempt from taxation. *Third Congregational Society of Springfield v. Springfield*, 147 Mass. 396.

A railroad company, as required by the Stat. of 1884, ch. 157, § 1, discontinued its location over certain land within the limits of its road, used by it for station purposes, and, as authorized by § 2, took another parcel of land, a narrow strip of which was within its original location, but had been sold by it, outside the limits of its road "for station purposes, and for tracks and yard room, to be used in connection therewith." *Held*, that the whole of the parcel was taken for station purposes, and under the Pub. Stats., ch. 112, § 92, and the Stat. of 1884, ch. 157, § 5, was subject to taxation. *Nor. & Wor. R.R. Co. v. Co. Com'r's*, 151 Mass. 69.

If a husband and wife with their children live together on the wife's real estate, the presumption is that the husband is in possession as head of the family and as her licensee; and the taxes thereon are properly assessed to him under the Pub. Stats., ch. 11, § 13, which provide for the assessment of taxes to the owner or person in possession of real estate. *C. Allen & Knowlton, J. J.*, dissenting. *Southworth v. Edmands*, 152 Mass. 203.

If a testator's real estate has duly vested in his devisees, who are not his heirs, by the probate and allowance of his will, taxes thereon are not lawfully assessable to the heirs of the testator under the Pub. Stats., ch. 11, § 18, which provide for such assessment to the heirs or devisees of a deceased person, until notice is given of the division of the estate and of their several names; and sales thereafter of such real estate for the non-payment of taxes assessed to such heirs are invalid. *Tobin v. Gillespie*, 152 Mass. 219.

The property of a county is exempt from taxation only when actually appropriated to public uses.

Real estate purchased by a county for enlarging a jail and jail grounds is taxable, while let for private purposes and a source of income to the county, by the city within which it is situated. *Inhabitants of Essex Co. v. Salem*, 153 Mass. 141.

If a corporation organized "for the purpose of diffusing knowledge and promoting intellectual improvement" in a certain city, occupies a hall in a building owned by it for a few evenings only each winter for a course of lectures on literary and scientific subjects, and during the rest of the year lets the hall for various purposes, the estate is not exempt from taxation under the Pub. Stats., ch. 11, § 5, cl. 8, although the income derived from letting the hall is devoted exclusively to making provision for such courses of lectures. *Salem Lyceum v. Salem*, 154 Mass. 15.

See EXEMPTION FROM TAXATION; CORPORATIONS; RELIGIOUS SOCIETIES; TRUST PROPERTY. Wesleyan Acad-

emy *v.* Wilbraham, 99 Mass. 599. Mass. Gen. Hospital *v.* Somerville, 101 Mass. 319. Jennings *v.* Collins, 99 Mass. 29.

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#### RELIGIOUS SOCIETIES.

Pub. Stats., ch. 11, § 5, cl. 7; § 22; ch. 38; § 28.

See Wesleyan Academy *v.* Wilbraham, 99 Mass. 599 (1868).

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#### RESERVOIRS.

See REAL ESTATE.

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#### SCHOOL DISTRICT.

The school district system in this Commonwealth was abolished by Acts of 1882, ch. 219.

See Pub. Stats., ch. 45, for provisions as to taking possession of district property, its appraisal and the assessment of taxes therefor.

SEE DISTRICT TAXES.

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#### SHIPS OR VESSELS.

##### *Partnerships.*

Pub. Stats., ch. 11, § 25.

A tax was assessed by a city on May 1, to five persons jointly as owners or trustees of a ship. The legal title to the ship was on that day in these persons in trust to complete the ship and sell her for the benefit of themselves and others having claims against her. All the trustees, on that day, did business in the city, but were not partners, and only three of them resided there. The vessel was at a wharf in the city, at which the trustees had hired a berth, with the right to pass over the wharf to the ship and to use the part of the wharf near the ship for storage. Held, that, although the three resident trustees were liable to taxation for their interest in the vessel, they could not under the Gen. Stats., ch. 11, § 12, be jointly taxed with the other trustees; and that the tax was illegal and void. Stinson *v.* Boston, 125 Mass. 348.

#### *Ships and Vessels engaged in the Foreign Carrying Trade.*

Pub. Stats., ch. 11, §§ 8-10; 1887, ch. 373; 1889, ch. 286; 1893, ch. 149.

STATE TAX.

See TAXES; WARRANTS; CORPORATIONS, *Taxation of Shares in; POLL TAX.*

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TAXES.

*Corporation.*

Under Pub. Stats., ch. 13, each town's proportion of these taxes is allowed it in settlement of its State tax.

*Highway.*

Abolished by Acts of 1871, ch. 298. See HIGHWAYS.

*Interest on Certain.*

See INTEREST.

*On Real Estate.*

Taxes on lands are an encumbrance thereon from the date of their assessment. *Cochran v. Guild*, 106 Mass. 29. See *Hill v. Bacon*, 110 Mass. 387.

Lien, 1888, ch. 390, § 30. *Coburn v. Litchfield*, 132 Mass. 451.

*Poll.*

See POLLS; OMITTED ESTATES AND POLLS.

*Priority of Claim for.*

Pub. Stats., ch. 157, § 104.

*Reassessed, Collection of.*

When the original assessment of a tax is valid its reassessment is void. *Oakham v. Hall*, 112 Mass. 535.

The following important decision was given by the Supreme Court of this State in the case of *Hubbard v. Garfield*, 102 Mass. 72 (1869) :—

*Opinion of the Court.*

COLT, J. The defendant, as collector of taxes in the town of Monterey, for the year 1866, justifies the arrest of the plaintiff under a warrant, which, with the accompanying tax list, was committed to

him by the assessors of that town for that purpose. It appears that the tax against the plaintiff, upon which the arrest was made, was originally placed on the list to her husband, Francis A. Hubbard, and was abated by the assessors of the following year, not the same persons who constituted the previous board. The tax so abated was then assessed by the board of 1867 to the plaintiff, with the exception of that part of it which was poll tax, and, in the presence of the defendant, was added to the tax list then in his hands for collection, without any other change made in the list or warrant.

The judge, upon these facts, ruled that the reassessment of the tax was invalid, and the arrest illegal.

It is not necessary to the complete justification of the defendant under his warrant, that the validity and regularity of the proceedings of the assessors in all respects relating to the abatement and reassessment should appear. The collector is certainly entitled to the full protection of the rule which regulates the liability of ministerial officers in the service of process. *Chase v. Ingalls*, 97 Mass. 524.

And where the assessors have jurisdiction of the subject-matter, and the process is regular on its face, he is not bound to examine into the legality of the previous proceedings, and cannot be affected by the existence of any fact not disclosed which deprives them of jurisdiction in that particular case.

Upon a careful consideration of those statutes, mainly to be found in the General Statutes, ch. 11, which provide for the election and define the duties of the board of assessors, we are of the opinion that the warrant and tax list under which this arrest was made furnish a sufficient justification of the defendant.

The provisions of section 53 are broad in their terms: "Every tax except a poll tax, which is invalid, by reason of any error or irregularity in the assessment, which has not been paid or which has been recovered back, may be reassessed by the assessors, for the time being, to the just amount to which, and upon the estate or to the person to whom, it ought at first to have been assessed."

The reassessment may be made after the expiration of the year by an entirely new board of assessors.

It extends to a tax which has been paid and recovered back by process of law, and which would usually carry the time far beyond the expiration of the year.

It may be used to correct an error which affects the entire list, as in the case of *Goodrich v. Lunenburg*, 9 Gray, 38, the decision of which manifestly occasioned the statute provision in question.

Or to cure an error discovered in any one or more of the individual taxes.

It reaches every description of error that may arise, either in regard to amount or estate or person.

There was authority enough, therefore, in the assessors to reassess the tax in question to the plaintiff.

The only difficult question is, whether they legally exercised it in this instance.

It is obvious that the reassessment, whenever made, by whichever board of assessors, must be based upon the valuation of the year in which the tax was first assessed. It must be made in pursuance of the original vote of the town, and the warrants of the State and county requiring it; and all corrections must have reference to them.

It is insisted by the plaintiff, that, under the statute, like proceedings must be had as are required in the original assessment; that the reassessed tax list, with a warrant specifying a reason for their

action, must be committed by the assessors to the collector for the time being.

If the error or irregularity in any given case were such as to invalidate the entire assessment, it would seem to be indispensable that an entire new list should be prepared, and should be accompanied with a new warrant.

But there is not the same necessity where the error is in the individual assessment, and there is nothing in the law which expressly requires it. It is to be borne in mind that the process under which the collector acts is in some respects peculiar and anomalous.

The warrant refers to the tax list which accompanies it as one of the documents constituting the collector's authority. If the warrant is lost or destroyed, the assessors may issue a new one, which shall have the same force and effect as the original, and, if issued by a new board, must have reference to the same original list.

The tax list is liable to be changed, from time to time, while in the collector's hands, by abatements and, what is more to the point, by additions thereto.

At the time when the power of reassessment under this statute was given, new names of tax payers were required to be added in certain cases of omission.

By section 50, persons who were liable to be taxed at the last annual assessment, and who applied seven days before an election, were to be taxed upon their polls and estates in the same manner as they would have been originally, with the further provision that the taxes so assessed be entered in the tax list of the collector, to be collected and paid over as specified in his warrant.

Thus the written warrant and authority of the collector, after it had been delivered to him for execution, was subject to be changed and added to by the board from which it issued, or in case of the death, removal or disability of any of its members, by their successors in office.

The last-cited section was indeed repealed by the Stat. of 1865, ch. 206, § 2, and similar provisions were made by the Stat. of 1868, ch. 211, § 2, and 1869, ch. 443.

The subsequent appeal does not affect this discussion, which relates to the interpretation to be given to the law at the time of its enactment.

The intention of the law is to be judged of with reference to the nature of the proceedings which it affects, and the character given to them by previous legislation; and, with the aid thus derived, it is apparent that the assessors may add new names to the collector's list, at least one legal mode of making the reassessment.

This mode would be less open to objection where the addition is made during the year by the same assessors, and before the expiration of the collector's term of office.

But the assessors constitute a tribunal with powers which imply a continued and uninterrupted existence, not limited to the individuals who at any given time compose it. And, if this were otherwise, the law in question expressly gives the power of reassessment to the assessors for the time being.

In regard to the collector, although his term of office has expired, he still has the power to complete the collection of taxes committed to him (Gen. Stats., ch. 12, § 2); and this, of course, embraces those which have been legally added to the list in his hand, and which, under the peculiar process, relate back to the original warrant, and are brought within its authority.

## *Laws Regulating Taxation.*

By these steps we arrive at the conclusion, that the assessment made to the plaintiff was within the jurisdiction of the assessors of 1867, and that the warrant for its collection in the defendant's hands was regular on its face.

This is far enough to go for defendant's justification. He is not called on to inquire whether the assessors erred in judgment as to the plaintiff's liability, or proceeded irregularly in any preliminary to the act of assessment. *Cheever v. Merritt*, 5 Allen, 565. *People v. Warren*, 5 Hill, 44<sup>o</sup>. *Watson v. Watson*, 9 Conn. 140. *Stoddard v. Tarbell*, 20 Vt. 397.

If it be said that this construction gives to this class of town officers great power over the persons and property of the citizens, the answer is, that it is no more than must necessarily be had for the discharge of the important and difficult duties connected with taxation, and no more than had been exercised from the earliest times under existing laws. The security is to be found in the integrity and fidelity of these officers, and not in a too strict construction of the statute under which they act.

Exceptions sustained *Hubbard v. Garfield*, 102 Mass. 72. Section 80 of ch. 11, Pub. Stats., alters the law of this case in some respects.

Certain mortgaged real estate, how taxable. Pub. Stats., ch. 11, §§ 13-16; 1882, ch. 175; 1889, ch. 84.

### TAX SALES.

Stat. 1888, ch. 390; 1889, ch. 334; 1890, ch. 331.

A sale cannot be made of an undivided part of an estate, and the sale is void if the advertisement states that sale of an undivided part will be made.

In this connection the following case is of importance to collectors:—

**SUPREME JUDICIAL COURT.**

**LAW — OCTOBER, 1887.**

**SARAH E. WALL v. CALEB A. WALL.**

Opinion of the Court.

**MORTON, J.** The tenant's title is derived from a sale and conveyance of the premises by the collector of taxes of the city of Worcester. The defendant makes several objections to the validity of this sale. We are satisfied that one of these objections must prevail.

The statute requires that the collector shall give notice of the time and place of sale of real estate taken for taxes by an advertisement, to be published in a newspaper of the county in which such estate lies, and "that the advertisement shall contain a substantially accurate description of the several rights, lots or divisions of the estate to be sold, the amount of tax assessed on each, the names of all owners known to the collector and the taxes assessed on their respective lands. Gen. Stats., ch. 12, §§ 28-29. It has been held that these requirements of the statute are not merely directory to the collector, but that they are conditions precedent to the validity of the sale, and

that, unless they are strictly followed, the sale is invalid. Thus, in *Alexander v. Pitts*, 7 Cushing, 503, it was held that as the tax assessed, for non-payment of which the estate was sold, was three dollars and thirty cents, and the advertisement stated the amount of the tax to be four dollars and twelve cents, the sale was void. See also *Farnum v. Buffum*, 4 Cushing, 260.

The collector's advertisement in this case gives notice to "the owners and occupants of the following described parcels of real estate" that the taxes on said estate assessed for the year 1872 remained unpaid, and "that said parcels of real estate, or such undivided portions thereof as may be necessary, will be offered for sale at public auction" at the place and time named.

A collector, by the Gen. Stats., ch. 12, § 33, is authorized, if the taxes are not paid, to sell the whole land, or, if it is capable of division, any part of it, or the rents and profits of the whole estate. But he is nowhere given any authority to sell any undivided interest in the land, so as to constitute the purchaser a tenant in common with the owner. The advertisement in this case gives notice to the owner and others interested that the collector intends to sell either the whole of the land of Sarah Wall, or such undivided portions thereof as may be necessary. As he had no right to sell any undivided portion of the land, it was not a due execution of the statute power, and therefore no title passed by the deed. *Crowell v. Goodwin*, 3 Allen, 535. This makes it unnecessary to discuss the other objections to the sale made by the demandants. Judgment for the defendant. *Wall v. Wall*, 124 Mass. 65.

After this decision the Stat. of 1879, ch. 229, was passed to make valid certain sales affected by the decision. That statute was declared by the court to be unconstitutional in the case of *Forster v. Forster*, 129 Mass. 559 (1880).

A collector's sale of several distinct and separate lots of land for the non-payment of taxes was held to be for one integral price, and therefore void. *Barnes v. Boardman*, 149 Mass. 106.

A sale of land by a collector of taxes, more than two years after a warrant for the collection of a tax thereon was committed to his predecessor, is void although within two years after the warrant was committed to the collector making the sale, if the land was alienated by the owner after the tax was assessed to him, and before the sale; and the grantee, if in possession of the land, may maintain a bill in equity against the purchaser, to remove a cloud from his title, when the purchaser has caused his deed from the collector to be recorded, refuses to release to the plaintiff and claims to be the owner of the land.

SUPREME JUDICIAL COURT.

EQUITY — APRIL, 1878.

GEORGE D. RUSSELL v. JAMES DESHON.

Opinion of the Court.

SOULE, J. By the Gen. Stats., ch. 11, § 38, assessors are required to commit the tax list to the collector within a reasonable time. By

ch. 12, § 22, it is provided that "taxes assessed on real estate shall constitute a lien thereon for two years after they are committed to the collector; and may be levied by sale thereof if the tax is not paid within fourteen days after a demand of payment made either upon the person taxed or upon any person occupying the estate; but the collector may sell real estate for taxes after two years have elapsed, unless the estate has been alienated in the mean time." The effect of this section is to make the tax a lien or encumbrance on the estate until the end of the two years, and no longer, although the tax may be afterward levied by sale of the land, if it has not been alienated by the person taxed. *Kelso v. Boston*, 120 Mass. 297.

It is evident that the purpose of a lien limited to two years was to give municipal officers abundant time in which to collect the taxes assessed on land, and no less to fix a time when the land should be released from an encumbrance created by the law for the public advantage. We are of opinion that the two years, at the expiration of which the lien is lost, begin to run when the tax is first committed to a collector. Any other construction of the statute would leave it quite uncertain when the lien would cease to exist. If a new lien, to continue for two years, were created whenever, by reason of the death or removal of a collector, the tax list is committed to a temporary collector, it is obvious that estates might be held under encumbrance for an indefinitely long period. We are not aware of any reason which makes this desirable in behalf of the public, and it would be manifestly inconvenient for the individual citizens.

The plaintiff's land was not sold by the collector until more than two years after the tax was committed to his predecessor in office. After the tax was assessed the land was alienated by the owner to whom it was taxed, and by his grantee, and at length was conveyed to the plaintiff before the collector sold it. The collector's sale was therefore void, and his deed to the defendant conveyed no valid title. But, as the defendant had caused the deed to be recorded, and refuses to release to the plaintiff, and claims that he owns the premises, the collector's deed to him creates a cloud on the plaintiff's title. The plaintiff, having continued in possession of the premises since he took his deed in November, 1875, cannot try his title by writ of entry, and can maintain a bill in equity to remove the cloud from his title. *Clauston v. Shearer*, 99 Mass. 209.

The demurrer must be overruled; and the plaintiff is entitled to a deed of release from the defendant and to recover his costs. *Decree accordingly. Russell v. Deshon*, 124 Mass. 342.

An addition of more than the five per cent. overlay allowed by the statute (Pub. Stats., ch. 11, § 49) will render a tax invalid to the extent of such excess. (For an exception to this rule, see Stats. 1887, ch. 226.) But such excess, even if it should appear on the face of the warrant, will not defeat the collector's justification of his acts in distraining and selling under authority of the warrant. The course open to the person assessed in such case is to pay under protest, and sue the town or district to recover back the illegal excess.

A collector distrained nine cows for a personal property tax, and sold all of them separately, although enough

was realized from the sale of seven to cover tax and all expenses. It was decided that the sale of the remaining two was a wrongful sale, which entitled the original owner to recover the value of the two cows.

SUPREME JUDICIAL COURT.

BERKSHIRE, SEPTEMBER, 1878.

HENRY D. CONE v. SHELDON E. FOREST.

Opinion of the Court.

COLT, J. This is an action of tort to recover the value of nine cows alleged to have been converted by the defendant to his own use. The defendant admits that he seized and sold the cows, and justifies his acts under a warrant issued to him as collector of the town of Great Barrington by the assessors of that town, directing him to collect a tax voted by one of the school districts of that town.

At the trial it appeared, by an inspection of the warrant, that to the amount voted by the district, namely, \$1,800.11, was added the sum of \$115.16 "for the overlaying on said tax."

The plaintiff claimed that, as the assessors added to the amount of the tax a sum exceeding five per cent. thereof, the assessment was illegal, and the warrant furnished no justification to the defendant. The statute provides that the assessors "may add to the amount of a tax to be assessed such sum, not exceeding five per cent. thereof, as any fractional division of the amount may render convenient in the apportionment." Gen. Stats., ch. 11, § 32. This provision substantially has been in force since the year 1785 Rev. Stats., ch. 7, § 28. Stat. 1785, ch. 50, § 11. Prior to that year it had been the common practice of the assessors either to suit their convenience in calculating the apportionment of the tax, or, with a view to meet abatements or defalcations and mistakes, to add to the amount of the tax voted a sum sufficient in their judgment to answer these purposes. *Colman v. Anderson*, 10 Mass. 105. But this was done without any statute authority; and in order to remove doubts as to the power of the assessors to do this, and at the same time to limit their discretion, the statute of 1785 was passed. It is clear that under the law as it now exists assessors have no right to add to the amount of the tax voted more than five per cent. thereof; and that, if they do so, their assessment for the amount of the excess is illegal.

It will not be necessary to consider whether this provision of the statute applies equally to school-district taxes; for we are of opinion that the collector is protected by his warrant, notwithstanding the illegality of the assessment.

He is entitled to the benefits which the law affords to ministerial officers in the service of process issued by courts of competent jurisdiction, and is not bound to examine into the legality of previous proceedings. *Hubbard v. Garfield*, 102 Mass. 72. *Underwood v. Robinson*, 106 Mass. 296. *Rawson v. Spencer*, 113 Mass. 40

Under the provisions of the Gen. Stats., ch. 11, § 54, and ch. 12, § 56, the illegality of this assessment, even if apparent on the face of the warrant, does not operate to defeat the defendant's justification. These provisions were first enacted in the statute of 1859, ch. 118. That act was probably passed in consequence of the decision in *Goodrich v. Lunenburg*, 9 Gray, 38, in which it was held that an error of the assessors in not assessing one-sixth of the State tax upon the

polls vitiated the assessment, and that the plaintiff could recover the whole tax in a suit against the town. The fourth section of the statute of 1859 provides that "whenever by any erroneous or illegal assessment, or apportionment of taxation, any party is assessed more or less than his due and legal proportion, such tax and assessment shall be void, only to the extent of the illegal excess of taxation, whenever such exists; and no party shall recover, in any suit or process based upon such error or illegality, greater damages than the amount of such excess."

In the revision of the following year these provisions were separated, and are found, with slight changes of phraseology, in the eleventh and twelfth chapters of the General Statutes cited above.

But we see no reason to suppose that the Legislature intended any change of the law.

The defendant is entitled to the protection afforded by these provisions.

The excess in the overlaying was within the meaning of the statutes an "erroneous or illegal assessment or apportionment," by which the plaintiff was assessed more than his due proportion.

The assessors had jurisdiction of the subject-matter; they acted under the vote of a legally constituted school district; the plaintiff was liable to assessment upon his property for the amount voted; all the proceedings were regular, with the single exception named.

The purpose of the statute of 1859 was to prevent the embarrassment and delay in the collection of taxes caused by errors of assessment or apportionment, where, as in *Goodrich v. Lunenburg*, the extent of the error and the amount of the illegal excess could be ascertained.

It is evident, also, that in order to give full force to its provisions, the collector must be protected in the collection of the whole tax assessed. The declaration of the statute that no sale, contract or levy shall be avoided by reason of any such error or irregularity implies this, and gives validity to the levy and sale. The collector is not required to correct errors of this description in the assessment. The sale cannot therefore be avoided either in whole or in part. The plaintiff is left to his remedy against the school district for the illegal excess.

The language admits of no other interpretation. In *Shaw v. Becket*, 7 Cushing, 442, it was decided that a party of whom a tax illegally assessed had been collected by distress, could recover of the town only the amount of the tax, with interest, and not the surplus value of the property sold, nor the cost of the distress. Although in that case there was no remedy against the collector, for the value of the property or the expenses incurred, because his warrant was sufficient authority for him; nor against the assessors, because by the statute they are exonerated from all liability, except when acting with want of fidelity and integrity. We adopt the language of the court there used as equally applicable to this case. The rule will be found not to be so unreasonable as may at first be imagined. The levy and sale can only take place after notice of the tax, and demand of the payment of the same. The party has always the opportunity before any expense is incurred to avoid the same wholly by payment of the tax. A payment thus made to a collector, clothed with authority to enforce a levy on the person or property, is not a voluntary payment that cannot be recovered back, but at once lays the foundation for an action against the town, a party always solvent, and against whom an execution can always be satisfied.

It is only, therefore, for a party denying the validity of a tax to pay the same if demanded by the collector, and the payment insisted upon, and, having done so, to institute his suit against the town to recover back the same . . . "It is to be borne in mind that no such demand can be made for a tax, or necessity exists for paying an illegal one except when such tax has been assessed by sworn officers of the law, and under all the forms of law."

In *Loud v. Charlestown*, 99 Mass. 208, where reference was had to the provision by which assessors are relieved from legal responsibility for an illegal assessment, and to the very provisions we are now considering, it was declared that the Legislature, in limiting and regulating the remedy, has regarded the remedy against the town as adequate and complete, having reference to the necessity of a prompt assessment and collection of taxes for the maintenance of government.

It follows that the defendant, in this case, committed no trespass in restraining the plaintiff's cattle under an insufficient warrant. The warrant in his hands was valid, notwithstanding the excess in over-laying. If the plaintiff wished to recover his property, and prevent the cost and expense of a sale, he had only to pay his tax to the collector under protest, and recover of the town the illegal excess. If it be urged that the previous provision for the reassessment of taxes, which are invalid by reason of any error or irregularity in the assessment (Gen. Stats., ch. 11, § 53), is inconsistent with the construction here given, the answer is that the provisions of section 53 are all satisfied by applying them to cases where a party is assessed for less than his due proportion, or when the tax is assessed to the wrong person, or upon the wrong estate; and do not imply that there is any necessity for a reassessment of a tax like this, which is more than the due proportion, and which when paid to the town or district cannot be wholly recovered back.

The remaining question is whether the defendant became a trespasser by selling more of the property distrained than was necessary to pay the tax and all charges, and if so, to what extent he is to be treated as a trespasser. If a person refuses or neglects to pay his tax, the collector is required to levy the same by distress, or seizure and sale of his goods. The goods are to be kept by him, at the expense of the owner, at least four days, and then sold at public auction; and, if sold for more than the tax, and all charges, the collector is required to return the surplus to the owner upon demand, with an account in writing of the sale and charges. Gen. Stats., ch. 12, §§ 7, 8, 12. The provisions are minute, but they do not authorize or require the return of any property once taken. The surplus in cash is to be returned on demand of the tax payer. The proceedings, however, in this respect are to be governed by common-law rules, which control the right to distrain goods for rent or taxes. Blackstone says that goods distrained are for a time only a pledge in the hands of the distrainers, which they are bound, by an implied contract in law, to restore to the owner, on payment of the debt and expenses, before the time of sale; or when sold to render back the overplus. 2 Bl. Com. 452. It is well settled that an officer is answerable in trover for property sold on execution, after he has realized money sufficient to satisfy his writ. *Stead v. Gascoigne*, 8 Taunton, 527. *Batcheller v. Wyse*, 4 M. & Sc. 552. *Aldrich v. Constable*, 62 B. 370. *Seekins v. Goodale*, 61 Maine, 400. *Wolcott v. Root*, 2 Allen, 194.

It appears, from the report in this case, that the cows here distrained were sold separately, for the prices specified in the defendant's

return; and that the sale of the first seven produced a sum sufficient to pay the full amount of the tax, cost of distress, and the defendant's fees, and that this was known to the defendant at the time. It was the duty of the defendant thereupon to return, or to offer to return, the remaining cows.

His act in proceeding to sell the same was a wrongful conversion of the property for which he is liable in this action, but which does not render him a trespasser *ab initio*. *Seekins v. Goodale*, above cited.

Judgment must therefore be rendered in favor of the plaintiff for the value of the two cows, as found by the jury. *Cone v. Forest*, 126 Mass. 97.

A sale of land for non-payment of taxes, if valid, creates a title paramount to any existing estate therein; and such title becomes absolute by the lapse of two years. *Langley v. Chapin*, 134 Mass. 82.

A sale of land under an advertisement of a collector of taxes, which offers for sale "said parcels of real estate, or such undivided portions of them as may be necessary," is invalid. *Sanford v. Sanford*, 135 Mass. 314.

An advertisement of a sale of a parcel of land taken for a tax, which incorrectly states the year for which the tax is assessed, does not comply with the Gen. Stats., ch. 12, § 20; and is fatally defective, although it states correctly the amount of the tax assessed. *Knowlton v. Moore*, 136 Mass. 32.

The provision in the Gen. Stats., ch. 12, § 35, that the collector's deed of land sold for the non-payment of a tax shall state "the place of residence of the grantee," is not merely directory; and a deed which omits such a statement is fatally defective *Ib.*

An action on the Gen. Stats., ch. 12, § 40, by the collector of taxes of a city, against a mortgagee of land, who has entered thereon and foreclosed his mortgage, after the lien created by section 22 has expired, for the amount of taxes assessed upon the land to the mortgagor in possession, cannot be maintained. *Sherwin v. Boston Five Cents Savings Bank*, 137 Mass. 444.

The statutes provide that "if after the sale of real estate for the payment of taxes a purchaser thereof fails to pay the collector within ten days the sum offered by him and to receive his deed, the sale shall be null and void, and the city or town shall be deemed to be the purchaser of the estate, according to the provisions of the preceding section." Pub. Stats., ch. 12, § 41. "If a purchaser does not pay the collector within ten days, the collector must, in order to comply with the statute, make a deed to the city or town; and a deed to the purchaser is void. The statute does not give the collector any option in the matter. In the case at bar, there was evidence sufficient to justify the finding that the defendant, the purchaser at the tax sale, failed to pay the collector within ten days the sum bid by him, and to receive his deed." *MORTON, C. J. Holt v. Weld*, 140 Mass. 578.

A deed of a collector of taxes recited that "no person has appeared to discharge said tax," and that the collector "has demanded the same of S., the reported owner of said real estate;" but the deed did not state that fourteen days elapsed after demand before advertising the premises for sale, or that the tax was not paid within fourteen days after the demand. *Held*, that, under the Gen. Stats., ch. 12, §§ 22, 35, the deed was void. *Langdon v. Stewart*, 142 Mass. 576.

If land is advertised for sale at the same time in the same newspaper by the same collector for the taxes of two successive years,







